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<p>THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA</p> <p>=====</p> <p>IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR A      HP07-001 PERMIT UNDER THE SOUTH DAKOTA ENERGY CONVERSION AND TRANSMISSION FACILITY ACT TO CONSTRUCT THE KEYSTONE PIPELINE PROJECT</p> <p>=====</p> <p>Transcript of Proceedings December 6, 2007 Volume IV, Pages 765-1,027</p> <p>=====</p> <p>BEFORE THE PUBLIC UTILITIES COMMISSION, DUSTY JOHNSON, CHAIRMAN GARY HANSON, VICE CHAIRMAN STEVE KOLBECK, COMMISSIONER</p> <p>COMMISSION STAFF John J. Smith, Commission Counsel Kara Semmler, Staff Attorney Karen Cremer, Staff Attorney</p> <p>APPEARANCES Brett M. Koenecke and David A. Gerdes, May, Adam, Gerdes &amp; Thompson, P.O. Box 160, Pierre, South Dakota 57501, appearing on behalf of the Applicant;</p> <p>James P. White, Sidley Austin, LLP, 1501 K Street Northwest, Washington, D.C. 20005, appearing on behalf of the Applicant;</p> <p>Jennifer Scott, TransCanada, 450 - 1st Street S.W., Calgary, AB, Canada T2P 5H1, appearing on behalf of the Applicant;</p> <p>Reported By Cheri McComsey Wittler, RPR, CRR</p>			
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1	APPEARANCES (Continued)		
2	Reed A. Rasmussen and Rodrick L. Tobin,		
3	Siegel, Barnett & Schutz,		
4	P.O. Box 490,		
	Aberdeen, South Dakota 57402,		
5	appearing on behalf of WEB Water;		
6	Curt Hohn,		
	appearing pro se;		
7	Roxanne Giedd, Diane Best, and Richard M. Williams,		
8	South Dakota Attorney General's Office,		
	1301 East Highway 14,		
9	Pierre, South Dakota 57501;		
10	Robert K. Sahr,		
11	East River Electric Power Cooperative,		
	P.O. Box 227,		
	Madison, SD 57042,		
12	appearing on behalf of East River.		
13	=====		
14	TRANSCRIPT OF PROCEEDINGS, held in the above-entitled		
15	matter, at the South Dakota State Capitol, Room 412, Pierre,		
16	South Dakota, on the 6th day of December 2007, commencing at		
17	8:30 a.m.		
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15	<u>Richard Hastings Exhibits</u>		13	3 Dan Hannan Direct Testimony	1560
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			14(2)	14(2) Muehlhausen Surrebuttal Testimony	1600
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1	<u>Sieh Exhibits</u>	<u>Received</u>	1	MR. SMITH: The hearing in Docket No. HP07-001 and	
2	1 Map of BDM water	739	2	that is in the matter of Application of TransCanada Keystone	
3	2 John Sieh Direct Testimony	739	3	Pipeline, LP for a permit to construct a crude oil pipeline,	
4	<u>Cassels Exhibits</u>		4	hydrocarbon pipeline, in South Dakota is hereby reconvened.	
5	1 Gene Cassels Direct Testimony	756	5	It's just barely after 8:30 in the morning. And at	
6	2 Marshall County Resolution	756	6	this point in time due to a request by staff due to a scheduling	
7	<u>Ed Miller Exhibits</u>		7	conflict, one of their witnesses, we will look to staff then to	
8	1 Ed Miller Direct Testimony	832	8	call the witness for which they have requested leave to call	
9	2 Miller Surrebuttal Testimony	832	9	today.	
10	3 PowerPoint presentation	832	10	Do you guys want to call her, and she can go through	
11	4 CD with NTSB, PHMSA, etc. studies	832	11	the swearing while you're looking around?	
12	<u>George Piper Exhibits</u>		12	MS. SEMMLER: Sure. I'd now like to call	
13	1 George Piper Direct Testimony	928	13	Brenda Winkler to the witness stand.	
14	2 Photo of James River Stream/Flow	936	14	(The witness is sworn by the court reporter)	
15	3 Photo of James River Stream/Flow	936	15	<u>DIRECT EXAMINATION</u>	
16	<u>Tim Hofer Exhibits</u>		16	<u>BY MS. SEMMLER:</u>	
17	1 Tim Hofer Direct Testimony	890	17	Q. Good morning, Ms. Winkler.	
18	<u>Delwin Hofer Exhibits</u>		18	A. Good morning.	
19	1 Delwin Hofer Direct Testimony	902	19	Q. Could you please state your name, employer, and employer's	
20	2 Map of personal property	906	20	address for the record.	
21	3 Easement - back page of agreement	906	21	A. My name is Brenda Winkler. My employer is Bay West,	
22	<u>Pam Hofer Exhibits</u>		22	Incorporated, and my employer's address is 5 Empire Drive,	
23	1 Pam Hofer Direct Testimony	919	23	St. Paul, Minnesota 55103.	
24	2 Book of structures w/in mile of PS-21	919	24	Q. Please state your educational background, Ms. Winkler.	
25	<u>Edward Goss Exhibits</u>		25	A. I have a bachelor of arts degree in geology from the	
	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 Testimony	750			

<p style="text-align: right;">781</p> <p>1 University of Minnesota, and I have 20 -- or, excuse me, I'm a</p> <p>2 registered professional geologist in the State of Minnesota and</p> <p>3 Wisconsin.</p> <p>4 Q. And tell us about your work experience.</p> <p>5 A. I have 21 years of experience in the investigation and</p> <p>6 remediation of soil sediment, ground water, and surface water</p> <p>7 contaminated sites. 10 of those years I worked for the State of</p> <p>8 Minnesota in the Super Fund Program.</p> <p>9 Q. Bay West, your employer, was contracted by the Commission</p> <p>10 to consult with staff on this case; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And can you tell us in general what you reviewed or</p> <p>13 analyzed in order to file your prefiled testimony and to testify</p> <p>14 here today?</p> <p>15 A. My test was to evaluate hydro geologic and geologic areas</p> <p>16 sensitive to a crude oil spill. To complete this task I</p> <p>17 performed a macro-level review of the hydro geology and geology,</p> <p>18 which included the review of published statewide geologic maps,</p> <p>19 along with county maps and available hydro geologic studies.</p> <p>20 I obtained that information from review of the South Dakota</p> <p>21 Geological Survey websites, as well as their staff members.</p> <p>22 Q. Did you request any specific type of information from the</p> <p>23 South Dakota Geological Survey?</p> <p>24 A. Yes. We requested updated maps.</p> <p>25 Q. And as part of your analysis, Ms. Winkler, did you review</p>	<p style="text-align: right;">783</p> <p>1 became aware that the preferred route runs through Marshall</p> <p>2 County, not Brown County. Therefore, my statements regarding</p> <p>3 the pipeline crossing through Brown County are no longer</p> <p>4 relevant.</p> <p>5 However, the geologic discussion is still applicable since</p> <p>6 similar geologic units are present in Marshall County.</p> <p>7 Q. Can you summarize your prefiled and your prefiled</p> <p>8 surrebuttal -- direct and surrebuttal testimony along with those</p> <p>9 edits for us.</p> <p>10 A. Yes.</p> <p>11 Q. Do you see two drawings? I'm going to show you these two</p> <p>12 drawings that will assist in your summary.</p> <p>13 Do you see those two drawings now in front of you?</p> <p>14 A. Yes.</p> <p>15 Q. Could you please identify the first drawing. They're being</p> <p>16 passed out now as well. Please identify the first.</p> <p>17 A. The first drawing is a cross-section from Bulletin 23 of</p> <p>18 Marshall County. This bulletin was discussed in testimony</p> <p>19 yesterday.</p> <p>20 MS. SEMMLER: We'll wait until they get passed out</p> <p>21 and, they can look at them.</p> <p>22 I would like to offer that drawing in evidence.</p> <p>23 MR. SMITH: Has it -- have you given it a mark?</p> <p>24 MS. SEMMLER: According to my list, it will be Staff</p> <p>25 Exhibit 19.</p>
<p style="text-align: right;">782</p> <p>1 the Applicant's burden of proof in SDCL 49-41B-22?</p> <p>2 A. Yes.</p> <p>3 Q. I'm now going to show you what's been marked as Staff</p> <p>4 Exhibit 1.</p> <p>5 Is this your prefiled direct testimony?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any additions, deletions, or edits to make?</p> <p>8 A. No.</p> <p>9 Q. I'm now going to show you what has been marked for</p> <p>10 identification purposes as Staff Exhibit 11.</p> <p>11 Is this your surrebuttal testimony?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any additions, deletions, or edits to make to</p> <p>14 your surrebuttal prefiled testimony?</p> <p>15 A. Yes, I do. On page 1, line 24, delete "Northern Brown</p> <p>16 County" and replace it with Northwestern Marshall County.</p> <p>17 On page 1, line 25, delete "There is approximately 6 to 7</p> <p>18 miles of." Then again on page 3, line 22 and 23, delete</p> <p>19 "Northern Brown County" and replace it with northwestern</p> <p>20 Marshall County.</p> <p>21 And on page 3, line 23, delete "There is approximately 6 to</p> <p>22 7 miles of."</p> <p>23 Q. Please explain the reason for the edits.</p> <p>24 A. In my surrebuttal testimony I discussed the proposed</p> <p>25 pipeline route crossing through Brown County. Since that time I</p>	<p style="text-align: right;">784</p> <p>1 MR. SMITH: Okay. And this is the hand drawing you're</p> <p>2 talking about?</p> <p>3 MS. SEMMLER: Nope. This is the cross-section.</p> <p>4 Q. I'd like you to now identify the second drawing.</p> <p>5 Mid-drink.</p> <p>6 A. The second drawing is a simplified schematic that I drew of</p> <p>7 subsurface conditions that are likely to be encountered along</p> <p>8 the majority of the pipeline route.</p> <p>9 MS. SEMMLER: I would like to offer the simplified</p> <p>10 schematic as Staff Exhibit 20.</p> <p>11 MR. SMITH: Mr. Koenecke, are you --</p> <p>12 MR. KOENECKE: No objection, Mr. Smith.</p> <p>13 MR. SMITH: And right now I'm asking with respect to</p> <p>14 both exhibits.</p> <p>15 MR. RASMUSSEN: No objection.</p> <p>16 MR. HOHN: No objection.</p> <p>17 MR. SMITH: Any other person wish to object? Staff</p> <p>18 Exhibits 19 and 20 are admitted.</p> <p>19 Q. Using those drawings to assist you in your summary then,</p> <p>20 could you please proceed with a summary of your testimony?</p> <p>21 A. Yes. Based on my review, a majority of the proposed</p> <p>22 pipeline route passes through silt and clay soils. Potable</p> <p>23 ground water or drinking water is obtained from water-bearing</p> <p>24 sand or gravel lenses or buried stream channels within these</p> <p>25 silt and clay soils. This is shown on my simplified schematic,</p>

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1 Exhibit 20.

2 The silts and clays will inhibit the downward migration of

3 contaminants to the underlying water-bearing sand and gravel

4 lenses, thereby providing a layer of protection in the event of

5 a crude oil release. Although the water table may be shallow in

6 some areas along the pipeline route, the water depth is

7 generally measured within the silts and clays, not in what we

8 would consider a potable water-bearing zone.

9 As shown in Exhibit 19, there are some areas where sand

10 deposits are present at the ground surface in Brown County.

11 Some of these sand deposits are hydraulically connected to the

12 Middle James Aquifer. As I have stated in my testimony, in

13 these areas the Middle James Aquifer could be considered a

14 potential hydro geologic sensitive area. I also stated that

15 Keystone should consider voluntarily identifying the sensitive

16 area in their integrity management plan in appropriately

17 planning to further protect this resource.

18 MS. SEMMLER: The witness is now available for

19 cross-examination.

20 MR. SMITH: At this point did you want to offer -- did

21 you offer yet her two chunks of testimony?

22 MS. SEMMLER: I don't think I did. I would like to

23 offer Exhibit 1 and Staff Exhibit 11, Exhibit 1 being direct and

24 11 being surrebuttal.

25 MR. KOENECKE: I have no objection. Thank you,

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1 Mr. Smith.

2 MR. RASMUSSEN: No objection.

3 MR. HOHN: No objection.

4 MR. SMITH: Anyone else? Staff's Exhibits 1 and 11

5 are admitted.

6 Mr. Koenecke, are you ready to proceed?

7 MR. KOENECKE: Yes. Thank you.

8 CROSS-EXAMINATION

9 BY MR. KOENECKE:

10 Q. Ms. Winkler, I'm looking at your Exhibit 19.

11 A. Yes.

12 Q. Can you explain further about what this graphic

13 representation is telling me? Are you able to do that?

14 A. Yes.

15 Q. I'm looking at the irregular line that starts on the left

16 and proceeds up and over to the right. Can you tell me what

17 that represents?

18 A. The ground surface line on top? Is that what you're

19 pointing to?

20 Q. This irregular black line.

21 A. Yes. That is the ground surface.

22 Q. And is the graph a representation of Marshall County clear

23 across from one side to the other, from the west to the east?

24 Do you know?

25 A. Yes. It is. And you see the township range numbers?

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1 Q. I do.

2 A. That is the route it takes. In the bulletin there is a

3 location map, which I didn't printout. I apologize. That shows

4 the exact location of that cross-section. It is figure 19-I,

5 index of the Marshall County showing traces of Section B to B

6 Prime to F to F Prime.

7 Q. If crude oil were to leak from the Keystone Pipeline and

8 get into the sandy areas with the hydraulic connection, how long

9 would it take before it would reach the James Aquifer, if you

10 know?

11 A. I did not study that. However, it is said that the

12 James Aquifer is at the surface in some areas. So it could be

13 immediate, if it was discharged into a surface water body.

14 Q. Would all areas of the aquifer be immediately affected?

15 A. No, they would not.

16 Q. Can you identify the centerline on the lithologic map?

17 A. The centerline?

18 Q. Yes. Where the centerline is on the lithologic map on the

19 pipeline. Can you identify where the pipeline goes through on

20 Staff 19, the proposed route?

21 A. Yes. I did look at that. The centerline is if you look at

22 your maps, your figures that you handed out yesterday and if I

23 could be provided with one of those, I will help everybody

24 assist or find that location.

25 Thank you.

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1 In my evaluation it appears that the pipeline crosses just

2 to the east of -- or west of -- I'm sorry -- the intersection of

3 Range 59 West and Range 58 West. So if you were to look at the

4 cross-section, it crosses -- look at the number 127 North,

5 59 West. And it says, 3BBBB on the cross-section.

6 Q. I'm looking at that. Thank you.

7 A. The location of the pipeline is just to the west of that.

8 So it would be in a high area at this location.

9 Q. And, if you know, what's the representation of the graph at

10 that point? I see some white space.

11 A. Uh-huh.

12 Q. An irregular -- or two irregular spots of less dense -- it

13 appears less densely denoted material. And then further

14 underneath that, more densely denoted material.

15 Can you explain that for the record, please.

16 A. Yes. The stippled areas, the dotted areas, are the

17 permeable soils, the sands and gravels. The other areas are

18 likely -- I don't have the boring logs with me, but they are

19 likely the clays and silts.

20 Q. So if I understand what you've told me correctly, the

21 pipeline will lay in clay, which overlies the sandy areas?

22 A. At that one point along the pipeline route. That's just

23 one cross-section.

24 Q. And if you know then, how many miles of pipeline route --

25 well, back up. Is what you're telling me that Staff 19 is one

<p style="text-align: right;">789</p> <p>1 cross-section of Marshall County?</p> <p>2 A. It is, yes, one point in time. Or on the map.</p> <p>3 Q. And do you -- traversing through Marshall County a distance</p> <p>4 of -- let me ask it this way. Do you know how many miles of the</p> <p>5 proposed route traverse through Marshall County?</p> <p>6 That wasn't fair of me. I didn't know so I asked you.</p> <p>7 Let's get a map out and look.</p> <p>8 A. I actually do know. I have it.</p> <p>9 24 miles, I believe. That's what I counted as</p> <p>10 approximately.</p> <p>11 Q. And so how much of the route lies -- is underlined by clay</p> <p>12 through Marshall County, if you know?</p> <p>13 A. I do not know. I did ask, and I was hoping to obtain</p> <p>14 information from your staff in their testimony regarding the</p> <p>15 miles of sand and how that number was calculated.</p> <p>16 Q. But at least according to -- Staff 19 seems to indicate</p> <p>17 that it's likely a substantial portion of it is underlain by</p> <p>18 clays; is that correct?</p> <p>19 A. No. This only indicates one cross-section across that</p> <p>20 entire --</p> <p>21 Q. Do you know where that one cross-section is?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me that, please.</p> <p>24 A. At the point where it intersects, Township 128 and 127. So</p> <p>25 if you look on your map, it would be map 3 -- I see on map 3 a</p>	<p style="text-align: right;">791</p> <p>1 than that.</p> <p>2 Q. I see. Do you know what the rate of water movement is</p> <p>3 within the James Aquifer?</p> <p>4 A. No, I don't.</p> <p>5 MR. KOENECKE: I have nothing further at this time.</p> <p>6 Thank you very much.</p> <p>7 THE WITNESS: Thank you.</p> <p>8 MR. SMITH: Mr. Rasmussen, cross-examination?</p> <p>9 MR. RASMUSSEN: Thank you.</p> <p>10 <u>CROSS-EXAMINATION</u></p> <p>11 <u>BY MR. RASMUSSEN:</u></p> <p>12 Q. On this cross-section, Exhibit 19, do you know on that</p> <p>13 drawing do you know where the location of the wells are for the</p> <p>14 BDM Rural Water system?</p> <p>15 A. No, I don't.</p> <p>16 MR. SMITH: Read, could I ask you to move the mic just</p> <p>17 a tad closer, please. Sorry.</p> <p>18 Thank you.</p> <p>19 MR. RASMUSSEN: No problem.</p> <p>20 Q. You made a comment about how you -- and maybe I misheard</p> <p>21 you, but you asked TransCanada people for some additional</p> <p>22 information.</p> <p>23 Do you recall making a comment about that in your testimony</p> <p>24 with Mr. Koenecke?</p> <p>25 A. Yes. During the testimony of Heidi Tillquist, Kara had</p>
<p style="text-align: right;">790</p> <p>1 Township 128, but I do not see 127.</p> <p>2 Q. Very well. I think we can figure that out.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Are there other geological -- I'm sorry.</p> <p>5 A. I was trying to find it. I was on the wrong map. I'm</p> <p>6 sorry. Map 1.</p> <p>7 I am not entirely sure on the map, but I believe it is near</p> <p>8 mile post 221. Or 220. Yeah. 221.</p> <p>9 Q. Are there other cross-sections of Marshall County which are</p> <p>10 available to you or were available to you, I should say?</p> <p>11 A. Yes. There are other cross-sections.</p> <p>12 Q. Have you reviewed those?</p> <p>13 A. Not in detail.</p> <p>14 Q. Why did you choose this particular cross-section?</p> <p>15 A. This cross-section was just chosen for -- to provide an</p> <p>16 example to show that the sands in some areas of Brown County are</p> <p>17 exposed at the surface and in contact with the Middle James</p> <p>18 Aquifer.</p> <p>19 MR. RASMUSSEN: Excuse me. She said Brown County. Do</p> <p>20 you mean Marshall?</p> <p>21 THE WITNESS: Marshall. I apologize.</p> <p>22 Q. So if I were to say that the pipeline only crossed 2 miles</p> <p>23 of sandy soil with connection to the Middle James Aquifer, would</p> <p>24 you be able to disagree or agree with me?</p> <p>25 A. No, I would not. It would take a bigger -- a larger study</p>	<p style="text-align: right;">792</p> <p>1 asked for information on the miles of sand crossing and how that</p> <p>2 number was calculated.</p> <p>3 Q. Okay. And did you get that information?</p> <p>4 A. No, I have not.</p> <p>5 Q. Have you still -- are you still requesting it, or are they</p> <p>6 going to get it for you?</p> <p>7 A. It was a request at the time of their testimony.</p> <p>8 Q. In your direct testimony on page 2, line 17, you talk about</p> <p>9 attempts to contact representatives of the South Dakota Geologic</p> <p>10 Survey to discuss conclusions and summaries of hydrogeologic and</p> <p>11 geologic data, and then you state that they were not available</p> <p>12 during the time of the review.</p> <p>13 What information were you attempting to obtain from the</p> <p>14 South Dakota Geologic Survey?</p> <p>15 A. We were contacting the Geological Survey to discuss the</p> <p>16 pipeline route, information that they may have pertaining to</p> <p>17 that route, and just it was our initial -- initial start of the</p> <p>18 review of the data.</p> <p>19 Q. Were you ever able to obtain that data?</p> <p>20 A. Yes, we were.</p> <p>21 Q. So you subsequently -- after you wrote your direct</p> <p>22 testimony you obtained the data you wanted?</p> <p>23 A. Yes.</p> <p>24 Q. Who did you deal with at South Dakota Geologic Survey?</p> <p>25 A. Derric Iles responded to my phone calls.</p>

<p style="text-align: right;">793</p> <p>1 Q. Did you deal with any other personnel from any state</p> <p>2 offices in connection with the work you did?</p> <p>3 A. We requested information from two other staff members at</p> <p>4 the Geologic Survey regarding updated hydrogeologic studies.</p> <p>5 Q. Okay. Did you get that information?</p> <p>6 A. Yes, we did.</p> <p>7 Q. Who were those people, if you recall?</p> <p>8 A. I don't recall.</p> <p>9 Q. All right. On page 3 of your direct testimony, line --</p> <p>10 starting at the very end of line 4 you state that in general the</p> <p>11 current published geologic maps available for the pipeline route</p> <p>12 do not contain enough detailed information about distribution of</p> <p>13 surficial geologic materials and bedrock outcrops to allow for a</p> <p>14 complete evaluation of hydrogeological and geologically</p> <p>15 sensitive areas.</p> <p>16 What are you talking about there?</p> <p>17 A. State and county maps are on broad scale. When we review</p> <p>18 an area that is the first place you start.</p> <p>19 For my work we delve into if I want to understand the</p> <p>20 geology of a specific area, I will go in and do soil borings or</p> <p>21 find out maybe if that facility or township has more information</p> <p>22 to the specific area.</p> <p>23 Q. Okay. Do you know if the Keystone people took any of those</p> <p>24 extra steps that you just mentioned in this case?</p> <p>25 A. I did not inquire.</p>	<p style="text-align: right;">795</p> <p>1 reviewed.</p> <p>2 Were there additional documents that you thought should</p> <p>3 have been reviewed, or what are you referring to in that</p> <p>4 statement?</p> <p>5 A. Similar to what I've already said is that the information</p> <p>6 that we reviewed is on a macro level, not a micro level. Okay?</p> <p>7 Q. You mentioned that you've been involved in remediation</p> <p>8 efforts for various kinds of spills?</p> <p>9 A. Yes.</p> <p>10 Q. Have you worked with crude oil spills?</p> <p>11 A. I've worked with petroleum releases. I don't recall if</p> <p>12 they were crude oil releases.</p> <p>13 Q. What are some of the problems that are encountered in</p> <p>14 remediating a spill of a petroleum product?</p> <p>15 A. If you're discussing the spill, immediate spill, the</p> <p>16 emergency response?</p> <p>17 Q. Well, what part do you play in remediation efforts?</p> <p>18 A. The part I play is after the response actions, you know,</p> <p>19 emergency response actions would have been taken. I look for</p> <p>20 the residual contamination.</p> <p>21 Q. And does petroleum products cause residual contamination?</p> <p>22 A. Yes.</p> <p>23 Q. What sort of contamination is caused?</p> <p>24 A. Yes, they can. I should correct that.</p> <p>25 Q. And what are the potential problems that can be caused by a</p>
<p style="text-align: right;">794</p> <p>1 Q. Did you hear any testimony to the effect that they did that</p> <p>2 in this instance?</p> <p>3 A. I heard testimony that they went to other -- to the</p> <p>4 communities and talked to them about what information they had.</p> <p>5 Q. Did they take any borings or anything like that that you</p> <p>6 know of?</p> <p>7 A. I don't know.</p> <p>8 Q. Line 28 of that same page you talk about a detailed review</p> <p>9 of depth to bedrock maps, boring logs, et cetera.</p> <p>10 What are you talking about there?</p> <p>11 A. In line 26?</p> <p>12 Q. Starting on line 28.</p> <p>13 A. I understand.</p> <p>14 Q. I'm sorry.</p> <p>15 A. I'm referring you to line 26.</p> <p>16 Q. All right. I'm sorry.</p> <p>17 A. In concurrence with the Draft Environmental Impact</p> <p>18 Statement, I just summarized some of their recommendations and</p> <p>19 thought that the additional information can be obtained from</p> <p>20 cross -- or from boring logs or available data.</p> <p>21 Q. Are you still recommending that that step be taken?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. On page 4, starting with line 16 -- well, actually</p> <p>24 line 17 is where you say, The ability to identify environmental</p> <p>25 issues of consequence was somewhat limited by the documents</p>	<p style="text-align: right;">796</p> <p>1 petroleum spill?</p> <p>2 A. The potential problems is the dissolved constituents can</p> <p>3 enter into ground water. That's one problem.</p> <p>4 Q. What are some other problems?</p> <p>5 A. I'm not -- it contaminates the soil in the ground water, I</p> <p>6 guess is the problems.</p> <p>7 MR. RASMUSSEN: Okay. Thank you. That's all the</p> <p>8 questions I have.</p> <p>9 MR. SMITH: Mr. Hohn, cross-examination?</p> <p>10 <u>CROSS-EXAMINATION</u></p> <p>11 <u>BY MR. HOHN:</u></p> <p>12 Q. Ms. Winkler, I'd like to go back to your Exhibit 19 that</p> <p>13 was handed out this morning, the graph figure 19 I believe it</p> <p>14 is.</p> <p>15 A. Yes.</p> <p>16 Q. And just to make sure I understand what you said earlier,</p> <p>17 there are -- there's a black line along what appears to be a</p> <p>18 township boundary between 128 and 127; is that correct? On</p> <p>19 figure 19.</p> <p>20 A. No. I don't see that.</p> <p>21 MS. SEMMLER: I think you're looking at the wrong</p> <p>22 thing.</p> <p>23 A. Are you looking at figure 19-I from the study, not one that</p> <p>24 was --</p> <p>25 Q. Yeah. That was handed out.</p>



1 A. Yeah. I understand.  
 2 Q. Maybe I need to clarify. Was the State Geological Report  
 3 entered into evidence or just used as a -- being used as an  
 4 exhibit?  
 5 MR. SMITH: I regret to say I can't remember. My  
 6 recollection is that it was merely referenced with respect to a  
 7 particular document that we looked at.  
 8 MR. HOHN: Can we look to other portions of that  
 9 report then to clarify?  
 10 MR. SMITH: Yeah. You can reference it if you want  
 11 to.  
 12 Q. I have a copy of the same report you have, and it's a State  
 13 Geological Study; correct?  
 14 A. Yes.  
 15 Q. Okay. In that same report, the document you have there,  
 16 Figure 19 also references Figure 19 D-D, which is a  
 17 cross-section. And this graph, Figure 19, shows the -- as I  
 18 understand it, the route across the county.  
 19 Would that be a correct representation?  
 20 A. The figure number is Figure 19-I, and, yes, it does.  
 21 Q. Okay. And looking at that Figure 19-I, there's a black  
 22 line with circles along the cross-section of the county.  
 23 Are those intended to be the boring holes that are shown on  
 24 19 D-D? Would that be your understanding?  
 25 A. I don't know if they are. There are no identifying marks

1 on those locations.  
 2 Q. On the document you submitted, Figure 19 D-D, Exhibit 19,  
 3 there are -- it appears to be a cross-section of the county in  
 4 that -- soil in that given area of the county; is that correct?  
 5 A. Could you restate the question, please.  
 6 Q. Exhibit 19, cross-section.  
 7 A. Uh-huh.  
 8 Q. It's representing a cross-section of soils at various  
 9 township and range locations across the county. Is that a  
 10 correct statement?  
 11 A. At various locations, yes.  
 12 Q. Okay. And I'm looking -- looking at the document, the  
 13 first -- you mentioned that the black line on top is the  
 14 elevation of the land; correct?  
 15 A. Correct.  
 16 Q. And then you see a 127 North, 60 West. Is that identifying  
 17 a township and range location, as far as you can tell?  
 18 A. Yes.  
 19 Q. And so the next one would be 127, 59.  
 20 A. Yes.  
 21 Q. Okay. And 127, 58; is that correct?  
 22 A. Correct.  
 23 Q. And 128, 58. Were you here yesterday, late yesterday, when  
 24 Mr. David Wade testified, the manager of the BDM Rural Water?  
 25 A. Yes, I was here.

1 Q. Okay. I believe, if I recall, he stated that his well was  
 2 north of Britton at a range of 128, 57.  
 3 Looking at this exhibit that you submitted, 19 D-D, you  
 4 identified the small dotted area is sand and soil vein; is that  
 5 correct?  
 6 A. The stippled areas are sand, yes.  
 7 Q. Okay. And then below that to the right, more the middle of  
 8 the page, there's another dotted area that refers to the  
 9 James Aquifer?  
 10 Is that what that shows?  
 11 A. Correct.  
 12 Q. I believe Mr. Wade testified that his well was in the James  
 13 Aquifer?  
 14 A. Correct.  
 15 Q. Right at where the Township and Range 128 North, 58 West  
 16 crosses through both veins, it appears; is that correct?  
 17 A. Yes.  
 18 Q. Is that a point of connection between the shallow sand vein  
 19 and the deeper James Aquifer, in your opinion?  
 20 A. Yes.  
 21 Q. Thank you.  
 22 MR. HOHN: There's one other map in that report I'd  
 23 like to reference, and if the Commission would like,  
 24 Mr. Koenecke has a copy of this document. We gave it to him  
 25 following the deposition. It might be something useful to enter

1 into the record. We may want to do that. She's using it as a  
 2 reference at this point.  
 3 MS. SEMMLER: WEB can certainly enter that when WEB's  
 4 testifying.  
 5 MR. HOHN: Thank you.  
 6 Q. There's one more figure I'd like to draw your attention to,  
 7 being the State's expert on this. Figure 21 of that same  
 8 report. It's an aerial map apparently of a county.  
 9 Do you see that figure?  
 10 A. Yes, I do.  
 11 Q. And this shows a colored area in green, and the lower right  
 12 section of the map, it refers to an aquifer boundary; is that  
 13 correct?  
 14 A. Yes.  
 15 Q. What is that identifying on the map? Is that identifying  
 16 the aquifer and the sand vein you were testifying to?  
 17 A. I think -- would you please restate your question.  
 18 Q. Looking at the upper left-hand portion of that figure,  
 19 21 --  
 20 A. Uh-huh.  
 21 Q. -- on the left side it shows Township 128 and then below it  
 22 Township 127; correct?  
 23 A. Uh-huh.  
 24 Q. It would appear based on Figure 21 and 19-D and 19-I that  
 25 that is where the cross-section you were using in your exhibit

<p style="text-align: right;">801</p> <p>1 or your testimony crosses, at that township -- between the two</p> <p>2 townships.</p> <p>3 A. That is what I said, yes.</p> <p>4 Q. Okay. So using what you said -- referring to what you said</p> <p>5 then, this aerial view of the county would appear to represent</p> <p>6 that cross-section, would it not?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. On this map, on Figure 21, there appear to be arrows</p> <p>9 pointing on the map in a direction from west to east; is that</p> <p>10 correct?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Is that indicating that that's the flow of the water in the</p> <p>13 aquifer?</p> <p>14 A. The key on that map says that arrow is the direction of</p> <p>15 water movement.</p> <p>16 Q. Okay. Thank you.</p> <p>17 MR. HOHN: I should clarify, Mr. Smith. What I was</p> <p>18 referring to there has also been labeled Wade Exhibit 1,</p> <p>19 David Wade Exhibit 1.</p> <p>20 MR. SMITH: Okay. Thank you.</p> <p>21 Q. Ms. Winkler, on page 3 of your testimony, your direct</p> <p>22 testimony, do you have it there?</p> <p>23 A. Yes, I do.</p> <p>24 Q. On line 26 and 27 you made a recommendation that additional</p> <p>25 measurements be performed to assess the thickness of overburden</p>	<p style="text-align: right;">803</p> <p>1 TransCanada Pipeline route, are you referring to the centerline</p> <p>2 of the pipe route or some distance either side?</p> <p>3 A. My reference is to the pipeline route. The reference that</p> <p>4 the Geological Survey was to the state.</p> <p>5 Q. I see. Okay. In reference to the karst outcropping, could</p> <p>6 you define for us laymen what a karst is in your opinion as a</p> <p>7 professional geologist?</p> <p>8 MS. SEMMLER: It's just been answered that karsts</p> <p>9 don't exist in South Dakota. It seems irrelevant.</p> <p>10 Q. Is that what you testified to, that they don't exist?</p> <p>11 MS. SEMMLER: Along the pipeline route you did testify</p> <p>12 to that, yes?</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. HOHN: The immediate route.</p> <p>15 Q. Is it possible that --</p> <p>16 MS. SEMMLER: I object. We're studying the pipeline</p> <p>17 route. Irrelevant.</p> <p>18 MR. SMITH: If they don't exist, it's irrelevant.</p> <p>19 MR. HOHN: Well, I thought what I heard she said was</p> <p>20 along the immediate route.</p> <p>21 MR. SMITH: Do you want to answer that?</p> <p>22 A. I am not an expert in karst topography.</p> <p>23 Q. Okay. Thank you. On page 4 of your direct testimony, line</p> <p>24 9 through 12, findings associated with this more detailed review</p> <p>25 should be provided to U.S. DOT, South Dakota PUC, and Geological</p>
<p style="text-align: right;">802</p> <p>1 and distribution of bedrock outcroppings in karst areas.</p> <p>2 Well, what are you saying with that statement? What are</p> <p>3 you recommending there? Could you summarize for us?</p> <p>4 A. The Draft Environmental Impact Statement discussed karst</p> <p>5 areas and indicated their presence in some portions of the</p> <p>6 state. Upon talking with the Geological Survey, they indicated</p> <p>7 to me that the karst areas are not present. You'll see that in</p> <p>8 my surrebuttal testimony.</p> <p>9 Q. So the reference to karst on page 3 from 26 to 34, those</p> <p>10 lines, the karst are shown on maps, but with further detailed</p> <p>11 study they don't exist? Is that what you're saying?</p> <p>12 A. No. What the -- I would refer you to my surrebuttal</p> <p>13 testimony, line 4 of page 4.</p> <p>14 Q. Okay. And what do you say there in that?</p> <p>15 A. "The South Dakota Geological Survey confirmed that there</p> <p>16 are no karst features or karst areas within the proposed</p> <p>17 pipeline route. The map that was included in the Draft</p> <p>18 Environmental Impact Statement was an older regional geological</p> <p>19 survey map which identified certain rock types at depth."</p> <p>20 Q. And when you say -- when you're saying in this statement</p> <p>21 the pipeline route, how far either side of the pipe are you</p> <p>22 referring to? Immediate route, or was it some distance from the</p> <p>23 route?</p> <p>24 A. Could you refer me to where you're --</p> <p>25 Q. The section you just referenced, that it's not along the</p>	<p style="text-align: right;">804</p> <p>1 Survey. Some areas -- would cause some areas to be defined as</p> <p>2 geologically sensitive high consequence areas.</p> <p>3 Do you see that section in your testimony?</p> <p>4 A. Could you tell me the page number again, please.</p> <p>5 Q. Yes. I'm sorry. It's page 4 of your direct.</p> <p>6 A. Thank you.</p> <p>7 Q. Line 9 through 12. Do you see that there?</p> <p>8 A. Yes, I see it.</p> <p>9 Q. Is that recommending or stating that additional borings</p> <p>10 might be useful in terms of determining sensitive high</p> <p>11 consequence areas?</p> <p>12 A. I believe that this information was discussed in the</p> <p>13 potential for karst areas, which is no longer relevant.</p> <p>14 Q. On the bottom of page 4 of your direct testimony, 30</p> <p>15 through 32.</p> <p>16 A. Yes.</p> <p>17 Q. Do you see that there?</p> <p>18 A. Uh-huh. Yes, I do.</p> <p>19 Q. The statement is that, Bay West's opinion, the construction</p> <p>20 of the proposed Keystone Project represents both significant and</p> <p>21 insignificant risks to the environment and the inhabitants.</p> <p>22 In your opinion for your piece of the work, your piece of</p> <p>23 the study, what are the significant risks?</p> <p>24 A. I would say in my opinion a significant risk is the</p> <p>25 potential for a crude oil release.</p>

<p style="text-align: right;">805</p> <p>1 Q. And the impact to the geology and the environment and the</p> <p>2 inhabitants, how does that -- the release affect the geology and</p> <p>3 the environment?</p> <p>4 A. If a release were to occur and the emergency response</p> <p>5 actions did not remove all of the contaminants, were unable to</p> <p>6 for whatever reason, there could be residual problems that</p> <p>7 affect the environment and human health.</p> <p>8 Q. And human health. Would the effect be an immediate effect</p> <p>9 or would it be over time or could it be both?</p> <p>10 A. It depends on the extent of the problem.</p> <p>11 Q. And would it depend on the geology of the location of the</p> <p>12 spill?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Would you hold the document up again, the Geological</p> <p>15 Study that you referenced there?</p> <p>16 A. This one?</p> <p>17 Q. Yeah.</p> <p>18 A. Yes.</p> <p>19 Q. Could you show us the cover?</p> <p>20 A. Would you like a copy?</p> <p>21 Q. Yeah. That would be useful. Thank you. Bulletin 23,</p> <p>22 Geology and Water Resources of Marshall County, 1975, is this</p> <p>23 part of what you reviewed for your preparing for the hearing?</p> <p>24 A. Yes.</p> <p>25 Q. When did you receive a copy of this document?</p>	<p style="text-align: right;">807</p> <p>1 are any different than any other contaminant? In your study you</p> <p>2 kind of went towards contaminants. Are there different brands,</p> <p>3 types? Worse, better?</p> <p>4 THE WITNESS: I don't know the difference between tar</p> <p>5 sands and crude oil. I do know that all contaminants have</p> <p>6 different properties.</p> <p>7 COMMISSIONER KOLBECK: Okay. So your study would</p> <p>8 differ with different contaminants?</p> <p>9 THE WITNESS: Yes, it would.</p> <p>10 COMMISSIONER KOLBECK: Could you explain to me why the</p> <p>11 one cross-section -- I just want to know, understand exactly</p> <p>12 what your task -- how you achieved your task.</p> <p>13 THE WITNESS: Why I provided the one cross-section?</p> <p>14 COMMISSIONER KOLBECK: Yeah. Just one cross-section.</p> <p>15 THE WITNESS: For today?</p> <p>16 COMMISSIONER KOLBECK: And why Marshall County? Why</p> <p>17 not Day, Yankton?</p> <p>18 THE WITNESS: I do have cross-sections for all the</p> <p>19 counties in my little book that I've been carrying around. But</p> <p>20 the cross-section I provided today was just for everyone's</p> <p>21 understanding of the geology. When we look at it it's very</p> <p>22 complex. It doesn't lend itself easily to words. A picture is</p> <p>23 a very useful tool.</p> <p>24 COMMISSIONER KOLBECK: Okay. So there are more</p> <p>25 cross-sections obviously. You've analyzed the whole entire</p>
<p style="text-align: right;">806</p> <p>1 A. I worked with a team of staff members that provided me with</p> <p>2 information to prepare my testimony. So I did not receive an</p> <p>3 entire copy. I received pieces that they felt were pertinent to</p> <p>4 the study area.</p> <p>5 Q. And when did you receive the pieces of the report? Do you</p> <p>6 recall? Was it some time ago or -- since you arrived in Pierre</p> <p>7 or recently?</p> <p>8 MS. SEMMLER: I question the relevance of this line of</p> <p>9 questioning. The exhibit was referenced in her testimony.</p> <p>10 MR. SMITH: Overruled. You can ask her.</p> <p>11 Q. The reason I'm asking the question is I'm wondering how</p> <p>12 much time you had to review the document.</p> <p>13 A. I received information, pieces of this information, over</p> <p>14 the last month.</p> <p>15 Q. Okay. And when did you receive the full document, the</p> <p>16 entire document that you have there now?</p> <p>17 A. I printed out the entire document yesterday.</p> <p>18 MR. HOHN: Okay. I have no further questions. Thank</p> <p>19 you.</p> <p>20 MR. SMITH: Thank you. Commissioners? Commissioner</p> <p>21 questions? Any other Intervener questions?</p> <p>22 Commissioners, do you have questions of Ms. Winkler?</p> <p>23 Commissioner Kolbeck.</p> <p>24 COMMISSIONER KOLBECK: I just have a couple here for</p> <p>25 you. Do you feel I guess after your studies that tar sands oil</p>	<p style="text-align: right;">808</p> <p>1 pipeline from border to border; correct?</p> <p>2 THE WITNESS: We reviewed available cross-sections.</p> <p>3 COMMISSIONER KOLBECK: Okay. And Mr. Hohn had asked</p> <p>4 you about significant risks with crude oil. Those risks are all</p> <p>5 associated with a release; correct? The significant risks --</p> <p>6 THE WITNESS: Yes.</p> <p>7 COMMISSIONER KOLBECK: If the pipeline was not to</p> <p>8 leak, which -- but if it was just in the ground, you don't see</p> <p>9 any risk with that?</p> <p>10 THE WITNESS: I didn't evaluate risks in that way, but</p> <p>11 looking at the geology and hydrogeology, no, that's not</p> <p>12 considered significant.</p> <p>13 COMMISSIONER KOLBECK: And I understand that we may</p> <p>14 need to keep in mind that you did task 7. There were many tasks</p> <p>15 performed by Bay West; correct?</p> <p>16 THE WITNESS: Correct.</p> <p>17 COMMISSIONER KOLBECK: We're just a little out of</p> <p>18 order is why -- your testimony may fit a little better tomorrow.</p> <p>19 THE WITNESS: Correct.</p> <p>20 COMMISSIONER KOLBECK: Monday and Tuesday. All right.</p> <p>21 That's all I have right now.</p> <p>22 MR. SMITH: Other Commissioner questions?</p> <p>23 Commissioner Hanson?</p> <p>24 COMMISSIONER HANSON: Good morning.</p> <p>25 THE WITNESS: Good morning.</p>

<p style="text-align: right;">809</p> <p>1 COMMISSIONER HANSON: Can you tell us, please, some of</p> <p>2 the research that you did on arriving at conclusions that you</p> <p>3 presented to us here, some of the documents you researched? Do</p> <p>4 you have that available to you now where you could regurgitate</p> <p>5 that to us or not?</p> <p>6 THE WITNESS: So the documents, the exact names of the</p> <p>7 documents I reviewed?</p> <p>8 COMMISSIONER HANSON: Just a general idea.</p> <p>9 THE WITNESS: I reviewed the State Geological Survey</p> <p>10 Map dated 2004. It's a statewide map. I also reviewed the</p> <p>11 bedrock map, and I don't know what date that is. There were</p> <p>12 seven counties, I believe -- that number might be wrong -- of</p> <p>13 additional information on the county level.</p> <p>14 There was a couple of counties that did not have any</p> <p>15 additional information of the geology or hydrogeology.</p> <p>16 COMMISSIONER HANSON: Mr. Hohn referred to a</p> <p>17 document -- I'll call it a document -- that you had made a copy</p> <p>18 of yesterday. Had you read that document to an extent prior to</p> <p>19 making copies of it? Had you seen it prior to that?</p> <p>20 THE WITNESS: I had the pieces that were pertaining to</p> <p>21 the county that I was looking at previously.</p> <p>22 COMMISSIONER HANSON: And you had that how long prior</p> <p>23 to yesterday approximately?</p> <p>24 THE WITNESS: Approximately three weeks.</p> <p>25 COMMISSIONER HANSON: Okay. And do you feel that's</p>	<p style="text-align: right;">811</p> <p>1 was a 6 to 7 miles of alien sands. Those are the sand dunes</p> <p>2 that are shown on the geologic map, the State Geologic Map, the</p> <p>3 2004 map.</p> <p>4 COMMISSIONER HANSON: So the 6 to 7 miles should not</p> <p>5 necessarily obstruct?</p> <p>6 THE WITNESS: It should be removed because that's what</p> <p>7 I based my research on. The 2004 map does not show those sand</p> <p>8 dunes present across the pipeline route in this area. However,</p> <p>9 there is sand present.</p> <p>10 COMMISSIONER HANSON: Thank you. I was trying to</p> <p>11 balance some of the statements such as on page 1. It says that</p> <p>12 the alien sands have average thickness -- well, rather than</p> <p>13 reading all of them, as I went back and forth between different</p> <p>14 paragraphs I was trying to figure out the significance of your</p> <p>15 testimony to those areas.</p> <p>16 THE WITNESS: Uh-huh.</p> <p>17 COMMISSIONER HANSON: And trying to understand the</p> <p>18 permeability of the sands and the relationship to the aquifers.</p> <p>19 And rather than my trying to figure that out, I'd appreciate it</p> <p>20 if you could -- perhaps a multiple choice question. Multiple</p> <p>21 choice where you have the opportunity to come up with your own C</p> <p>22 I guess it would be.</p> <p>23 Would you say that it's -- if a failure of the</p> <p>24 pipeline took place in South Dakota, that there would be a</p> <p>25 likelihood or it would not be likely or search your own, the</p>
<p style="text-align: right;">810</p> <p>1 sufficient time for you to have read and understood that</p> <p>2 information?</p> <p>3 THE WITNESS: I -- the pipeline route is a very long</p> <p>4 route. There are -- there's a lot of information available on</p> <p>5 the entire route. What we did was a macro level. We didn't</p> <p>6 dissect it. We in general looked at what types of geology the</p> <p>7 pipeline would be crossing.</p> <p>8 So reviewing this document in particular when we were</p> <p>9 looking at the previous route, which there were a couple of</p> <p>10 different routes that were identified on some of the maps that I</p> <p>11 had, looking at that I felt that I had adequate information</p> <p>12 initially -- adequate amount of time to review the sections I</p> <p>13 needed to review.</p> <p>14 COMMISSIONER HANSON: And this is something you've</p> <p>15 done before, obviously?</p> <p>16 THE WITNESS: I'm not sure what you mean by something.</p> <p>17 COMMISSIONER HANSON: Well, I'll strike the question</p> <p>18 then. Thank you. In your surrebuttal testimony is it -- I was</p> <p>19 not able to keep up with all the changes as you were giving</p> <p>20 them. Is it safe to simply cross out Brown, to strike Brown</p> <p>21 County, and insert Marshall in every instance? There's quite a</p> <p>22 few --</p> <p>23 THE WITNESS: Yeah. I guess the easy way to say that</p> <p>24 is that it's northeastern -- or northwestern instead of northern</p> <p>25 Brown County. It's northwestern Marshall. And the other part</p>	<p style="text-align: right;">812</p> <p>1 contamination of an aquifer.</p> <p>2 THE WITNESS: Repeat that question one more time.</p> <p>3 COMMISSIONER HANSON: You're making it tougher on me</p> <p>4 than I am on you.</p> <p>5 Would you say that it would be likely or unlikely that</p> <p>6 a failure of the pipeline in South Dakota would cause a</p> <p>7 contamination of an aquifer?</p> <p>8 THE WITNESS: Based on my review of the available</p> <p>9 data, a majority of the pipeline route does cross silts and</p> <p>10 clays. If a crude oil release occurred in those areas, it is</p> <p>11 less likely to contaminate an aquifer.</p> <p>12 In the sand areas in Northern Marshall County it is</p> <p>13 possible. It is more likely to occur.</p> <p>14 COMMISSIONER HANSON: Appreciate that. Thank you.</p> <p>15 Thank you, Mr. Hearing Examiner.</p> <p>16 MR. SMITH: Commissioner Johnson.</p> <p>17 CHAIRMAN JOHNSON: Hi, Ms. Winkler.</p> <p>18 THE WITNESS: Hi.</p> <p>19 CHAIRMAN JOHNSON: You do identify in your surrebuttal</p> <p>20 that, you know, Marshall County is an area of maybe greater</p> <p>21 concern than other areas of the route.</p> <p>22 Do you have a high confidence level that your concerns</p> <p>23 with regard to the geologic deposits are limited to Marshall</p> <p>24 County, or is it possible that these -- or in your estimation is</p> <p>25 it likely that these geologic formations extend to other</p>

<p style="text-align: right;">813</p> <p>1 counties we should also be giving a heightened sensitivity to?</p> <p>2 THE WITNESS: Based on my review, these types of</p> <p>3 features aren't present in other areas of the pipeline route.</p> <p>4 They do talk about potential -- there was one area where there</p> <p>5 is stream deposits that consist of sand and gravel. It's</p> <p>6 possible that is present in other areas of the pipeline route.</p> <p>7 I know that there are -- they call it alluvium, which is -- the</p> <p>8 alluvium deposits as described in many of the reports that I</p> <p>9 reviewed say that they consist of silts and high organic</p> <p>10 material, which would tend to inhibit the flow of a release</p> <p>11 downward, you know, migration downward, I guess.</p> <p>12 It's possible that there are sands and gravels in</p> <p>13 other places along the pipeline route. And it's something that</p> <p>14 could be noted during the installation of the pipeline that</p> <p>15 these are present, and if we had a problem -- or if there was a</p> <p>16 crude oil release, you would be able to reference that it's</p> <p>17 there, and it's something that they need to evaluate if a</p> <p>18 release occurred in that area.</p> <p>19 CHAIRMAN JOHNSON: On page 3 of your surrebuttal</p> <p>20 beginning on line 25 you note -- you note that Keystone should</p> <p>21 consider voluntarily identifying the sensitive area in their</p> <p>22 integrity management plan in appropriately planning to further</p> <p>23 protect this resource.</p> <p>24 Did you have anything in mind as far as steps to</p> <p>25 protect the resource when you were preparing your testimony?</p>	<p style="text-align: right;">815</p> <p>1 that the water quality will be impacted.</p> <p>2 COMMISSIONER KOLBECK: Okay.</p> <p>3 THE WITNESS: Okay?</p> <p>4 COMMISSIONER KOLBECK: Okay. Yeah. It's a highly</p> <p>5 sensitive area, the water is, but you're saying if the proper</p> <p>6 remediation was taken, it's not necessarily imminent that it</p> <p>7 would be damaged?</p> <p>8 THE WITNESS: Yeah. Both water and soil. I should</p> <p>9 correct that.</p> <p>10 COMMISSIONER KOLBECK: Thank you.</p> <p>11 MR. SMITH: I have just a couple of questions for you.</p> <p>12 Going back to -- you were here when Ms. Anderson testified</p> <p>13 yesterday?</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. SMITH: Could you take a look then at Staff 19.</p> <p>16 This is pretty close I think to what Mr. Hohn asked you, but I</p> <p>17 just wanted to clarify for me.</p> <p>18 And I can't remember the exact location of her plot of</p> <p>19 ground. And this might not -- it's probably not right on the</p> <p>20 precise cross-sectional east to -- or west to east line.</p> <p>21 But if the -- she testified concerning some quite</p> <p>22 shallow wells on their property, eight wells that were of a</p> <p>23 depth of 20 to 30 feet, in that range.</p> <p>24 THE WITNESS: Correct.</p> <p>25 MR. SMITH: Would it be -- based upon at least this</p>
<p style="text-align: right;">814</p> <p>1 THE WITNESS: I believe that other people will have</p> <p>2 recommendations in that area. I didn't.</p> <p>3 CHAIRMAN JOHNSON: Okay. In a general sense, did you</p> <p>4 know whether you were speaking about construction or design or,</p> <p>5 you know, emergency response in a general so I know who to ask,</p> <p>6 which expert to --</p> <p>7 THE WITNESS: Definitely in the emergency response</p> <p>8 area. There are -- it is my understanding that there are some</p> <p>9 other construction things that could be put in place.</p> <p>10 CHAIRMAN JOHNSON: Okay. That's all I have,</p> <p>11 Mr. Smith. Thanks. Ms. Winkler, thanks.</p> <p>12 MR. SMITH: Thank you. Excuse me, Commissioner</p> <p>13 Kolbeck. I thought you were done.</p> <p>14 COMMISSIONER KOLBECK: I just have one more that I</p> <p>15 missed here. On page 3 of your direct testimony, line 3,</p> <p>16 however, High sensitivity does not indicate that water quality</p> <p>17 has or will be degraded.</p> <p>18 Could you explain that to me a little bit more?</p> <p>19 THE WITNESS: Well, I think what we've talked about is</p> <p>20 that a sensitive area such as the sand being present at the</p> <p>21 surface or where the pipeline is buried.</p> <p>22 COMMISSIONER KOLBECK: Uh-huh.</p> <p>23 THE WITNESS: If there were a release and the</p> <p>24 emergency response team cleaned it up, then it's not really a</p> <p>25 problem. I mean, there isn't a -- it doesn't mean that your --</p>	<p style="text-align: right;">816</p> <p>1 cross-section, it's at least possible, is it not, that that kind</p> <p>2 of situation might occur within that -- one of those areas where</p> <p>3 we see the dip in the line and where the surficial line</p> <p>4 intersects with that shallow aquifer?</p> <p>5 THE WITNESS: Yes. That is correct.</p> <p>6 MR. SMITH: And that that then might in turn</p> <p>7 interconnect via this interface between the James River and the</p> <p>8 surficial aquifer?</p> <p>9 THE WITNESS: That is correct.</p> <p>10 MR. SMITH: That's possible. Okay. Thank you. Did</p> <p>11 you have a chance in your review -- did you or -- I guess you.</p> <p>12 Did you have a chance to review the studies done by the</p> <p>13 South Dakota Geological Survey on the permeability</p> <p>14 characteristics of unoxidized till?</p> <p>15 THE WITNESS: I did not.</p> <p>16 MR. SMITH: You did not. Okay. Is the reason you</p> <p>17 selected this particular exhibit, Staff 19, to bring in today</p> <p>18 because that reflects in your mind an area of particular</p> <p>19 vulnerability, that it's illustrative --</p> <p>20 THE WITNESS: I could have drawn this figure. I used</p> <p>21 it because it was a published document in the area of concern</p> <p>22 that shows the interconnection of the two, the surficial sands</p> <p>23 with the James Aquifer.</p> <p>24 MR. SMITH: You picked this one, though, rather than</p> <p>25 say, for example, a cross-section from Hutchinson County.</p>

<p>817</p> <p>1 THE WITNESS: I picked this one because -- yes.</p> <p>2 MR. SMITH: And is that because you in your review, at</p> <p>3 least, the review that you did, that the areas other than this</p> <p>4 generally exhibit some form of much less vulnerable profile?</p> <p>5 THE WITNESS: That is correct.</p> <p>6 MR. SMITH: Thank you.</p> <p>7 Staff, do you have any redirect?</p> <p>8 MS. SEMMLER: I do. Thank you.</p> <p>9 <u>REDIRECT EXAMINATION</u></p> <p>10 <u>BY MS. SEMMLER:</u></p> <p>11 Q. Some of the testimony that was highlighted by Mr. Rasmussen</p> <p>12 and Mr. Hohn centered on the DEIS, Draft Environment Impact</p> <p>13 Statement's, suggestion that maybe additional steps should be</p> <p>14 taken, borings, et cetera.</p> <p>15 But the state that we're in right now, with the planning of</p> <p>16 this pipeline, TransCanada's at an appropriate stage as far as</p> <p>17 the testing and the review that's done; is that correct?</p> <p>18 A. Yes. I agree.</p> <p>19 Q. There was also some testimony pulled out of your direct</p> <p>20 testimony about your correspondence with South Dakota Geological</p> <p>21 Survey. You experienced cooperation from that agency, and</p> <p>22 although there was some time constraints regarding the deadline</p> <p>23 for your rebuttal, you got what you needed.</p> <p>24 There was complete cooperation with that agency; correct?</p> <p>25 A. That is correct.</p>	<p>819</p> <p>1 Mr. Smith.</p> <p>2 <u>REXCROSS-EXAMINATION</u></p> <p>3 <u>BY MR. KOENECKE:</u></p> <p>4 Q. If you'd look at Staff 19 with me, please, I understand</p> <p>5 there's a representation on this map of very fine sand. Am I</p> <p>6 correct?</p> <p>7 A. Yes. Medium sand or coarser and very fine sand.</p> <p>8 Q. Yeah. I didn't mean to mislead you. There's both on the</p> <p>9 map.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Are the very fine sands a good hydraulic conduit to an</p> <p>12 aquifer?</p> <p>13 A. I don't know -- I'm not exactly sure what your question is.</p> <p>14 Fine sand is more permeable than say a silt or a clay.</p> <p>15 Q. Is it less permeable than a till -- I'm sorry. More</p> <p>16 permeable than a till?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Is it less permeable than a coarser sand or gravel?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Thank you. Would you be surprised or would you agree with</p> <p>21 me that the movement of water through this aquifer is at 10s of</p> <p>22 feet per year?</p> <p>23 A. I would have to look at that -- at the study to agree with</p> <p>24 you.</p> <p>25 Q. Did you hear David Wade's testimony yesterday?</p>
<p>818</p> <p>1 Q. Tell us -- as I understand, you have -- you do have</p> <p>2 extensive experience in spill remediation; correct?</p> <p>3 A. In releases, yes.</p> <p>4 Q. And you mentioned some problems in response to a question</p> <p>5 that could occur as a result of a spill. And those are all the</p> <p>6 types of problems that an emergency response plan would address</p> <p>7 and that could be remediated; correct?</p> <p>8 A. That is correct.</p> <p>9 Q. We looked at several maps, cross-sections. Those are</p> <p>10 estimates; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And in your macro level study one of those estimates is</p> <p>13 that nearly 95 percent of this pipeline potentially goes through</p> <p>14 the till, the more impermeable till layers that you mentioned?</p> <p>15 A. If you were to use the 11.2 miles as presented in previous</p> <p>16 testimony, that would be correct. However, I still don't have</p> <p>17 the information for the calculations of that number.</p> <p>18 Q. Using those calculations, however, the majority being</p> <p>19 95 percent of this pipeline goes through that impermeable tilled</p> <p>20 layer.</p> <p>21 A. That is my understanding, yes.</p> <p>22 MS. SEMMLER: Thank you.</p> <p>23 THE WITNESS: You're welcome.</p> <p>24 MR. SMITH: Mr. Koenecke, any recross?</p> <p>25 MR. KOENECKE: I do have some recross. Thank you,</p>	<p>820</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall what he said about the movement of water</p> <p>3 through the aquifer?</p> <p>4 A. It was a long day so I don't remember everything. I don't</p> <p>5 remember the exact numbers, but I remember it was -- I remember</p> <p>6 the discussion.</p> <p>7 Q. In response to one of the Commissioner questions I seem to</p> <p>8 recall that you said that -- well, I don't want to mislead you.</p> <p>9 Let me back up here a minute.</p> <p>10 My recollection is you made somewhat of an unclear</p> <p>11 reference to something being more likely in the deposits in</p> <p>12 Marshall County. You didn't mean that a pipeline spill or leak</p> <p>13 was more likely there?</p> <p>14 A. Absolutely not.</p> <p>15 Q. There's no greater likelihood of a leak in Marshall County</p> <p>16 than any place else along the line, within your experience?</p> <p>17 A. In my opinion, no.</p> <p>18 Q. Very good.</p> <p>19 A. Based on geology.</p> <p>20 Q. If a leak was to occur in the areas in Marshall County near</p> <p>21 the Middle James Aquifer -- well, please strike that.</p> <p>22 In your experience is the level of contamination in an</p> <p>23 aquifer a function of the level of the emergency response?</p> <p>24 A. I don't believe the emergency response takes into account</p> <p>25 the level of contamination in an aquifer. They just respond to</p>

<p style="text-align: right;">821</p> <p>1 the emergency.</p> <p>2 Q. And then so then it would be remediation that would lead to</p> <p>3 the either lack of or contamination of an aquifer? I guess what</p> <p>4 I'm trying to get at is have you taken into account time and</p> <p>5 quality or level of the emergency response or remediation in</p> <p>6 your discussion here today?</p> <p>7 A. I think I'd like you to restate that.</p> <p>8 Q. Okay. I'll do that. Is contamination of the aquifer</p> <p>9 likely, given a response from Keystone in the hours and days</p> <p>10 which Mr. Thomas discussed and the remediation techniques of</p> <p>11 which you're aware, is contamination of the aquifer likely?</p> <p>12 A. I can say that contamination of the aquifers -- of an</p> <p>13 aquifer can happen in a crude oil release.</p> <p>14 Q. And what I'm trying to understand is the time it will take</p> <p>15 to contaminate the aquifer.</p> <p>16 A. It depends on the geology.</p> <p>17 Q. And in the geologic features which we've been discussing,</p> <p>18 the surficial sands, what kind of time are we looking at?</p> <p>19 A. I didn't calculate that.</p> <p>20 Q. In your experience, however, soil can be remediated?</p> <p>21 A. Soil can be remediated.</p> <p>22 Q. Can ground water be remediated?</p> <p>23 A. Ground water can be remediated.</p> <p>24 Q. Can an effective emergency response reduce the likelihood</p> <p>25 of contamination?</p>	<p style="text-align: right;">823</p> <p>1 Q. Maybe I misread it, but -- well, let me ask it another way.</p> <p>2 Would soil borings along the pipeline route prior to</p> <p>3 construction identify sand veins and potentially -- potential</p> <p>4 geological areas that should be treated carefully?</p> <p>5 A. Of course that is something that would provide that</p> <p>6 information.</p> <p>7 Q. In your opinion as a geologist would that be a prudent</p> <p>8 recommendation for -- prior to construction?</p> <p>9 A. No.</p> <p>10 Q. It wouldn't be necessary?</p> <p>11 A. I would not recommend it because it is a very long</p> <p>12 distance.</p> <p>13 Q. Go ahead. I'm sorry.</p> <p>14 A. I think that documenting that information during the</p> <p>15 installation of the pipeline is a good recommendation.</p> <p>16 Q. Oh, I'm sorry. I misunderstood what you said. So what</p> <p>17 you're saying is when they do build, if they encounter soils of</p> <p>18 that nature, document them and map them?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And then how would that information be useful for</p> <p>21 the emergency response team that would come in if there was an</p> <p>22 issue?</p> <p>23 A. I think that as much information that they have at their</p> <p>24 fingertips is -- the more the better.</p> <p>25 Q. Would that be something that could be located with GPS,</p>
<p style="text-align: right;">822</p> <p>1 A. Yes, it can.</p> <p>2 Q. Mr. Smith, I believe, brought up shallow wells in Marshall</p> <p>3 County. And so directing you to that, if a well was extremely</p> <p>4 shallow, would the water quality be affected by nonpoint sources</p> <p>5 like agricultural practices, if you know?</p> <p>6 A. Please state that again.</p> <p>7 Q. If you know. If someone has a shallow well in Marshall</p> <p>8 County?</p> <p>9 A. Yes.</p> <p>10 Q. Is that likely to be impacted by agricultural practices?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Such as pesticides?</p> <p>13 A. Fertilizers, pesticides, yes.</p> <p>14 Q. Okay.</p> <p>15 MR. KOENECKE: I have nothing further. Thank you.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. SMITH: Any further recross, Mr. Rasmussen?</p> <p>18 MR. RASMUSSEN: I don't.</p> <p>19 MR. HOHN: I would.</p> <p>20 <u>RECROSS-EXAMINATION</u></p> <p>21 <u>BY MR. HOHN:</u></p> <p>22 Q. Ms. Winkler, your recommendation or one of the comments in</p> <p>23 your direct testimony was a condition or recommendation might be</p> <p>24 soil borings along the pipeline route; is that correct?</p> <p>25 A. No. I don't believe so.</p>	<p style="text-align: right;">824</p> <p>1 global positioning?</p> <p>2 A. I'm not sure what you're referring to.</p> <p>3 Q. Let me rephrase the question. As the construction occurred</p> <p>4 if these geological areas, sandy soils, potentially sensitive</p> <p>5 soils were identified, could that location then be mapped on a</p> <p>6 GIS mapping system for use later by all parties involved?</p> <p>7 A. Yes, it could.</p> <p>8 Q. Would that be useful, do you think, in your opinion or</p> <p>9 your -- would that be useful for emergency response?</p> <p>10 A. I am not sure what the best method would be for emergency</p> <p>11 response.</p> <p>12 Q. Okay. And then just one last question. There are no --</p> <p>13 well, let me back up. Once an oil leak reaches an aquifer or a</p> <p>14 sandy soil it's contaminated at that point or it's been -- it's</p> <p>15 been impacted; correct?</p> <p>16 A. It's -- no. Because it would have to dissolve into the</p> <p>17 aquifer.</p> <p>18 Q. And would it have to move -- to contaminate an aquifer or a</p> <p>19 portion of an aquifer does it have to move?</p> <p>20 A. Does the contaminants that are already in the aquifer have</p> <p>21 to move or what is --</p> <p>22 Q. Let me rephrase it. Maybe I'm confusing the question, but</p> <p>23 I'll try to -- I'll restate it.</p> <p>24 Assuming there's no crude oil in the sands in western</p> <p>25 Marshall County now --</p>

<p style="text-align: right;">825</p> <p>1 A. Yeah.</p> <p>2 Q. -- and the pipeline is built and a leak, unfortunately,</p> <p>3 occurs, the minute the leak enters the sand the contamination</p> <p>4 has begun; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And then it's just a matter of how far it goes -- when it's</p> <p>7 caught and how far it goes; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. So depending on when it's noticed or found and TransCanada</p> <p>10 is contacted and a team can come out of specialists to deal with</p> <p>11 the problem, that is going to determine how much the aquifer is</p> <p>12 contaminated, the time between the leak and finding it; is that</p> <p>13 correct?</p> <p>14 A. No.</p> <p>15 Q. No?</p> <p>16 A. It depends on the geology.</p> <p>17 Q. And the amount of spill?</p> <p>18 A. The amount of spill would have -- play a factor, yes.</p> <p>19 Q. You were here yesterday when there was discussion, I</p> <p>20 believe, regarding the DNV report?</p> <p>21 A. Yes, I was.</p> <p>22 Q. And were you present when there was discussion regarding up</p> <p>23 to 90 days before --</p> <p>24 A. Yes.</p> <p>25 Q. Before small leaks might be detected?</p>	<p style="text-align: right;">827</p> <p>1 (The witness is sworn by the court reporter)</p> <p>2 MR. SMITH: Mr. Miller, since you don't have an</p> <p>3 attorney to sort of prompt you, you'll just have to take off and</p> <p>4 do it on your own.</p> <p>5 MR. MILLER: Okay. I guess I'd like to state my name</p> <p>6 for the record. My name is Edward D. Miller. My address is</p> <p>7 300 West Vermont in Salem, South Dakota 57058.</p> <p>8 I guess I'd like to give a little bit of background</p> <p>9 about myself as it relates to this case. I have a degree in</p> <p>10 computer science from the University of Minnesota, and I worked</p> <p>11 several years in a professional capacity as a database</p> <p>12 administrator and as a data analyst for Exxon Company USA in</p> <p>13 Houston.</p> <p>14 I did submit direct testimony with exhibits in this</p> <p>15 case, and I did submit a surrebuttal as well with an exhibit.</p> <p>16 And I do have a couple of minor corrections, very minor</p> <p>17 corrections that I need to make.</p> <p>18 On my direct testimony on page 5, when people are</p> <p>19 ready, it's paragraph 8. Like I say, on page 5 toward the</p> <p>20 bottom. It would be the third sentence in that paragraph where</p> <p>21 it says, "These accidents have resulted in more than</p> <p>22 1.22 trillion dollars." That should be billion dollars with a</p> <p>23 B.</p> <p>24 Okay. If everybody has that, there's one in my</p> <p>25 surrebuttal as well. That would be on the second page of my</p>
<p style="text-align: right;">826</p> <p>1 A. Yes.</p> <p>2 Q. Would a pin -- would that be a concern geologically if a</p> <p>3 leak went on for 90 days before it was found?</p> <p>4 A. I think that any release is a concern.</p> <p>5 Q. Okay.</p> <p>6 MR. HOHN: Thank you very much.</p> <p>7 THE WITNESS: Uh-huh.</p> <p>8 MR. SMITH: Are there any further questions of this</p> <p>9 witness?</p> <p>10 MS. SEMMLER: None. Thank you.</p> <p>11 MR. SMITH: Thank you. You're excused, Ms. Winkler.</p> <p>12 Thank you very much.</p> <p>13 (The witness is excused)</p> <p>14 We're going to take a short break. 10-minute break</p> <p>15 says Commissioner Kolbeck.</p> <p>16 (A short recess is taken)</p> <p>17 MR. SMITH: Let's go back on the record. After a</p> <p>18 short recess we're reconvening the hearing. And at this point</p> <p>19 the scheduled testimony is Intervener Ed Miller. And I owe</p> <p>20 Mr. Miller an apology for not getting him in yesterday as</p> <p>21 promised. And he was here, and I think he knows why that didn't</p> <p>22 happen.</p> <p>23 But, Mr. Miller, if you could, could you please take</p> <p>24 the witness stand and be sworn.</p> <p>25 Mr. Miller is a pro se Intervener on his own.</p>	<p style="text-align: right;">828</p> <p>1 surrebuttal, paragraph 5. It has to do with the Enbridge</p> <p>2 Pipeline incident last week, and it's about the third sentence</p> <p>3 down. It says, The pipeline involved in this incident, and then</p> <p>4 in parenthesis it says, Line 4. That should say line 3. So</p> <p>5 it's a minor correction there as well.</p> <p>6 I guess as far as my testimony goes, if I were asked</p> <p>7 the same questions today, I would respond in the same way. I</p> <p>8 guess, in other words, I would support my testimony as it's been</p> <p>9 submitted and corrected.</p> <p>10 I also have another exhibit, which is the printout of</p> <p>11 a PowerPoint presentation. I guess I didn't quite understand</p> <p>12 how this hearing was going to go. So when I was talking with</p> <p>13 staff about presenting my direct testimony I thought one way to</p> <p>14 do that was with a PowerPoint presentation, but I had a</p> <p>15 misunderstanding there based on the way that you've established</p> <p>16 the protocol here.</p> <p>17 So I would like to distribute that and mark it as an</p> <p>18 exhibit as well if I could, please.</p> <p>19 MR. SMITH: Sure. Why don't we then -- we'll mark</p> <p>20 your direct as Miller 1. We'll mark your surrebuttal as</p> <p>21 Miller 2 and we'll mark your PowerPoint presentation as</p> <p>22 Miller 3.</p> <p>23 Is the PowerPoint generally reflective of what you had</p> <p>24 in your two testimonies? Is it primarily a graphic depiction of</p> <p>25 the -- what you had in there?</p>



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1 THE WITNESS: Yes. I would say that the PowerPoint, a  
2 fairly significant degree, does go through my direct testimony.  
3 So I'm not going to present it directly. I just brought it for  
4 a reference so if there are questions or whatever, I might refer  
5 to it.  
6 MR. SMITH: Okay. That sounds good. With that then,  
7 why don't you proceed.  
8 MR. MILLER: If I could, there's one other question I  
9 had too. There's an awful lot of supporting documents I had  
10 like NTSB studies and that kind of thing. And I submitted that  
11 on a CD. What do I need to do?  
12 MR. SMITH: Well, you might want to -- is that CD --  
13 do we have it?  
14 THE WITNESS: Yes. I mailed it in. And I mailed it  
15 to Mr. Koenecke as well.  
16 MR. SMITH: Have you reviewed it, Mr. Koenecke?  
17 MR. KOENECKE: Apologize. Having a discussion in the  
18 back. The CD that was mailed earlier this fall or just  
19 recently?  
20 MR. SMITH: I'm not sure. I think it was recently,  
21 right.  
22 THE WITNESS: Yes. This would be the CD that I just  
23 mailed to you last week.  
24 MR. KOENECKE: We've got that.  
25 MR. SMITH: You've had a chance to look at it as to

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1 what's on there?  
2 MR. KOENECKE: I'd prefer that you address the  
3 questions to Mr. White.  
4 MR. WHITE: I guess I just want clarification whether  
5 anything on the CD differs from what's in your supporting  
6 material to the PowerPoint presentation?  
7 THE WITNESS: It's supporting material to my  
8 testimony, the direct testimony, the surrebuttal and the  
9 PowerPoint.  
10 MR. WHITE: Understood.  
11 MR. SMITH: Basically it's the document that you  
12 referenced in terms of various statistical documents?  
13 MR. MILLER: Right. And it does include a couple of  
14 computer-type files as well that are not really printout  
15 documents. For instance, a lot of my analysis goes over the  
16 PHMSA database where the accidents are listed. So that's more  
17 of a computer file than it is say something you would print out  
18 as a document.  
19 MR. SMITH: Okay. My reason for asking is just  
20 whether we can mark the entire PowerPoint as your Exhibit 4 --  
21 not PowerPoint, the CD, or whether we've got to go through and  
22 cut it, break it up into pieces.  
23 I don't know, Mr. White. I don't know whether you're  
24 going to have objections or whether anyone else will.  
25 MR. WHITE: Mr. Smith, I think we'd be fine as marking

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1 the CD as one single exhibit.  
2 MR. SMITH: Okay. Thanks. We'll call that then  
3 Miller 4. And I don't know whether you want to do any  
4 foundational testimony first, or do you just want to make an  
5 offer of all four exhibits and --  
6 MR. MILLER: I guess I would go ahead and make an  
7 offer of all four exhibits.  
8 MR. SMITH: And, I don't know, Mr. White, you probably  
9 haven't seen the PowerPoint much yet, but other than that,  
10 you've reviewed the other three.  
11 MR. WHITE: Right. We would have no objection as to  
12 the exhibits that we've seen, and I think we'd like to reserve  
13 the right to object to the PowerPoint until we have seen it.  
14 MR. SMITH: Okay. We'll go through that then. And  
15 maybe just remind me at the end of that then. You can offer it  
16 at that point in time once it's been looked at so we know what  
17 it is.  
18 Is that fair?  
19 THE WITNESS: Okay. Yeah. I'll make a note.  
20 MR. SMITH: Unless there's an objection, I'm going to  
21 admit Miller 1, 2, and 4.  
22 MR. RASMUSSEN: We have no objection to any of the  
23 exhibits.  
24 MR. HOHN: No objection.  
25 MR. SMITH: Staff? Okay. Miller Exhibits 1, 2, and 4

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1 are admitted.  
2 Please proceed.  
3 MR. MILLER: Okay. I guess I'll just give a little  
4 bit of a summary or a background, and then we can just -- I  
5 think the best way to approach this is just to go through  
6 questions and so forth.  
7 I guess the thing that I'd like to say is the reason  
8 that I'm here it's kind of involuntary in a way. You know, I  
9 didn't choose to be here. It was just my land was chosen. And  
10 I'm confronted with a situation where I need to make a decision  
11 about how to proceed with that regarding an easement and that  
12 kind of thing.  
13 In order to be able to make those kind of decisions  
14 I've gathered a lot of information that I think is relevant to  
15 me to help me make that kind of a decision, and I think it's  
16 relevant to this case as well.  
17 The information that I have is largely dealing with  
18 oil spills, basically from the perspective of what kind of risk  
19 do I face as a landowner. And I guess having said that, overall  
20 being here today I'm kind of frustrated. I'm frustrated because  
21 of what I would call credibility issues, meaning believability  
22 type issues regarding some of the information that we've gotten  
23 from the Applicant regarding historical spills, for example.  
24 And one instance of that would be, for instance, the  
25 testimony that Ms. Tillquist had stated in her prefiled

<p style="text-align: right;">833</p> <p>1 testimony where she stated that the average spill according to</p> <p>2 the PHMSA database is 12 barrels. Well, you know, as you saw on</p> <p>3 Tuesday, she changed that dramatically. Significantly higher.</p> <p>4 And another thing that we saw this week is -- you</p> <p>5 know, as a landowner I go to places like the Corporate Social</p> <p>6 Responsibility Report from the Applicant to get information from</p> <p>7 that. And I'm kind of disappointed in that in that, you know,</p> <p>8 it seems that there are hundreds literally of the most</p> <p>9 inconsequential spills in one respect and yet the really</p> <p>10 critical ones -- like an example would be the near catastrophic</p> <p>11 spill near Brookdale, Manitoba where human lives were at risk at</p> <p>12 one point. That's not listed there at all.</p> <p>13 So it's very misleading to me as a landowner to get</p> <p>14 that kind of information and not have the most important</p> <p>15 information that I think would apply to me.</p> <p>16 I guess the other thing is, you know, that's -- that's</p> <p>17 all water under the bridge, so to speak. That's historical. So</p> <p>18 as we sit here today, you know, where do we go from here? You</p> <p>19 know, there's this facility in the works, so to speak, and as a</p> <p>20 landowner I'm looking toward the future. And, again, what do I</p> <p>21 expect, or what are we going to find?</p> <p>22 And, you know, there's the forecast that was provided</p> <p>23 by DNV, for example, the frequency volume analysis. As a</p> <p>24 landowner I don't have a lot of confidence in that from the</p> <p>25 perspective it seems to me a lot of it's not relevant to me</p>	<p style="text-align: right;">835</p> <p>1 like I said, it's mostly about spills and that kind of thing.</p> <p>2 MR. SMITH: Right. And it was -- it was, you know,</p> <p>3 thorough and clear so I think with that then, I think what we'll</p> <p>4 do is tender you for cross-examination by Mr. White.</p> <p>5 MR. WHITE: Thank you, Mr. Smith.</p> <p>6 <u>CROSS-EXAMINATION</u></p> <p>7 <u>BY MR. WHITE:</u></p> <p>8 Q. Good morning, Mr. Miller.</p> <p>9 A. Good morning.</p> <p>10 Q. I'd like to ask you a little bit about your background.</p> <p>11 You indicated that you were a database administrator and a</p> <p>12 database analyst; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And was that during the period of time that you were</p> <p>15 employed by the Exxon Corporation?</p> <p>16 A. That's correct.</p> <p>17 Q. And how long did you work with the Exxon Corporation?</p> <p>18 A. I started in 1984, and I left in 1992. So it was</p> <p>19 approximately eight years.</p> <p>20 Q. Okay. And what have you done subsequent to that</p> <p>21 employment?</p> <p>22 A. When I left Exxon I went into the investment business. I</p> <p>23 worked for Dean Witter for a couple of years. And since then</p> <p>24 I've been on my own. I consider myself an independent private</p> <p>25 investor.</p>
<p style="text-align: right;">834</p> <p>1 because, for instance, the references at the end of the study</p> <p>2 there are so many of them that are outside of the United States,</p> <p>3 for example, in terms of location. And there are so many of</p> <p>4 them that are referencing other types of pipelines like gas</p> <p>5 pipelines, for example.</p> <p>6 So as a landowner again I don't have a whole lot of</p> <p>7 confidence there. And I'm really concerned about that because</p> <p>8 we don't know what to expect going forward.</p> <p>9 So with that, I guess I'd just like to say that I</p> <p>10 appreciate you giving me the latitude that you have, you know,</p> <p>11 being here on my own, so to speak, you know. On my own time, on</p> <p>12 my own dime, so to speak. I don't have a corporate staff and a</p> <p>13 legal staff and all of that kind of stuff, although perhaps in</p> <p>14 hindsight I should have took another look at that.</p> <p>15 At any rate, I guess that's a summary of the testimony</p> <p>16 that I've submitted, and I guess perhaps the best way to go</p> <p>17 through this is to see who has questions, and I'll try to</p> <p>18 address them the best I can.</p> <p>19 MR. SMITH: We could do that. Were you going to run</p> <p>20 through all or some portion of your PowerPoint? Or were you</p> <p>21 just going to use that as your reference materials in responding</p> <p>22 to questions?</p> <p>23 THE WITNESS: Right. I think I would prefer the</p> <p>24 second one there. Instead of going through -- linearly, it</p> <p>25 would go through a lot of my direct testimony, which, again,</p>	<p style="text-align: right;">836</p> <p>1 Q. Okay. And while you were with the Exxon Corporation were</p> <p>2 you involved in their oil pipeline division?</p> <p>3 A. Not directly. No, sir. I was in headquarters, and I</p> <p>4 worked mainly with headquarter functions.</p> <p>5 Q. And did you perform any oil spill risk analyses while you</p> <p>6 were with the Exxon Corporation?</p> <p>7 A. No, sir.</p> <p>8 Q. And did you perform any frequency or volume of spill</p> <p>9 analyses with the Exxon Corporation?</p> <p>10 A. No, sir, I have not.</p> <p>11 Q. Have you ever performed any since you left the Exxon</p> <p>12 Corporation?</p> <p>13 A. No, sir.</p> <p>14 Q. So this would be your first foray into the risk and spill</p> <p>15 analysis business?</p> <p>16 A. I would say yes. From the perspective that when I was</p> <p>17 looking at this it's primarily looking in hindsight, so to</p> <p>18 speak. I guess the distinction I need to make in doing my</p> <p>19 analysis here, I'm not presenting a forecast. You know, I'm</p> <p>20 looking at this strictly from a historical perspective.</p> <p>21 Q. And so you're analyzing statistics essentially?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And I guess would you say that it's important that</p> <p>24 in analyzing the statistics that you're -- the databases you</p> <p>25 look at be accurately understood?</p>

<p style="text-align: right;">837</p> <p>1 A. Yes. I would say that's -- that's fair to say, yes.</p> <p>2 Q. And so that a misunderstanding with respect to a database</p> <p>3 might result in a conclusion that might not be accurate?</p> <p>4 A. I would say that that could be a fair statement.</p> <p>5 Q. And I assume that in preparing this voluminous presentation</p> <p>6 that you offered to the Commission you conducted a fair amount</p> <p>7 of research; is that right?</p> <p>8 A. Yes. I'd say so.</p> <p>9 Q. And in that research did you have occasion to look into</p> <p>10 trends in the industry with respect to pipeline safety?</p> <p>11 A. Yeah. There's information that goes back 20 or 30 years.</p> <p>12 And in looking at that you can see that there are some trends</p> <p>13 that are evident.</p> <p>14 Q. And what trends did you identify with specific regard to</p> <p>15 crude oil pipeline safety?</p> <p>16 A. Specifically regarding crude oil, I don't think I looked</p> <p>17 specifically at crude oil. I would look at hazardous liquids</p> <p>18 which would include refined products as well.</p> <p>19 Q. Okay.</p> <p>20 A. And I would say that there is a trend there where there is</p> <p>21 improving performance in terms of spills.</p> <p>22 Q. And how would you characterize that improving performance?</p> <p>23 Would it be significantly improved? For example, the experience</p> <p>24 of the industry in the '50s, '60s and '70s, would there be</p> <p>25 significant improvement in the '90s and most recently</p>	<p style="text-align: right;">839</p> <p>1 case?</p> <p>2 A. I've been doing this -- doing the research that went into</p> <p>3 here for much of the year. I would say starting back at about</p> <p>4 that time in the middle of the year.</p> <p>5 Q. Okay. I think you mentioned in your overview presentation</p> <p>6 the Brookdale incident. And I understand that you were</p> <p>7 concerned that that incident was not reported on TransCanada's</p> <p>8 social responsibility website.</p> <p>9 Is that accurate?</p> <p>10 A. I think if I remember correctly, according to the testimony</p> <p>11 of Ms. Kothari, I do think that she said it is included, but</p> <p>12 it's included under the area of greenhouse gas releases if I</p> <p>13 remember correctly.</p> <p>14 What I meant by that, that it was not necessarily listed as</p> <p>15 a critical incident or a critical spill, for example.</p> <p>16 Q. And do you recall Ms. Kothari's testimony that it was</p> <p>17 posted as a critical incident on other posting sites?</p> <p>18 A. She did testify that it was part of a different -- separate</p> <p>19 incident management system. But I'm not aware that she</p> <p>20 testified that it was available to the public, so to speak.</p> <p>21 Q. And if that were, would that relieve your concern that it</p> <p>22 wasn't posted on the social responsibility website?</p> <p>23 A. I guess I don't know. I looked on there, and I haven't</p> <p>24 seen it or been able to find it.</p> <p>25 Q. Okay. But, as I understand your concern, it was because</p>
<p style="text-align: right;">838</p> <p>1 constructed pipelines?</p> <p>2 A. I didn't go back to the '50s and '60s, but, I mean, it's</p> <p>3 fairly evident even going back to the 1970s that there has been</p> <p>4 a significant improvement in that the total volume of spills</p> <p>5 today is lower than it was back in those decades.</p> <p>6 Q. And would you consider yourself to be an expert in pipeline</p> <p>7 safety?</p> <p>8 A. No, sir.</p> <p>9 Q. And would be considered -- would you consider yourself</p> <p>10 to be an expert with respect to pipeline risk and spill</p> <p>11 analyses?</p> <p>12 A. No, sir.</p> <p>13 Q. Okay. Now you indicated that you're a landowner on the</p> <p>14 pipeline route?</p> <p>15 A. That's correct.</p> <p>16 Q. And have you been approached by Keystone with respect to</p> <p>17 efforts to acquire an easement across your property?</p> <p>18 A. Yes, I have.</p> <p>19 Q. And when did that occur?</p> <p>20 A. Let me think back. I think that the first contact I had</p> <p>21 was perhaps in the early summer. I don't really recall</p> <p>22 specifically when it was. It was this year.</p> <p>23 Q. Summer of 2007?</p> <p>24 A. Yes. It was this year.</p> <p>25 Q. Okay. And when did you prepare your testimony in this</p>	<p style="text-align: right;">840</p> <p>1 that incident was not posted on the specific site that you</p> <p>2 looked at; is that correct?</p> <p>3 A. I guess my concern was that in reviewing the Corporate</p> <p>4 Social Responsibility Report I didn't find any information about</p> <p>5 it.</p> <p>6 Q. On that specific report.</p> <p>7 A. I would say on that report, yeah.</p> <p>8 Q. Okay. I'd like to ask you to take a look at your direct</p> <p>9 testimony. It's been marked as Miller 1. And specifically</p> <p>10 what's been marked as Exhibit H to Miller 1.</p> <p>11 A. Yes.</p> <p>12 Q. Do you have that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And could you briefly describe what that exhibit is</p> <p>15 intended to show?</p> <p>16 A. My Exhibit H, it's a comparison chart of the spill</p> <p>17 frequency rate for hazardous liquid pipelines in North America.</p> <p>18 Basically what the chart shows is the annual number of oil</p> <p>19 spills for a given length of pipe. And in this particular</p> <p>20 instance the segment of pipe that I had selected was 1,845 miles</p> <p>21 because that was the length of the Keystone Pipeline. So I used</p> <p>22 that for comparison purposes.</p> <p>23 Q. And what conclusion did you draw from this chart?</p> <p>24 A. I would say the conclusion that I would draw by looking at</p> <p>25 this chart is that the projected spill frequency rate for the</p>

<p style="text-align: right;">841</p> <p>1 Keystone Pipeline is significantly lower than the actual</p> <p>2 historical track record of the information that I got from these</p> <p>3 three separate sources, which would be an independent study</p> <p>4 conducted by the California State Fire Marshall, the actual</p> <p>5 track record of Canadian pipeline company called Enbridge, and</p> <p>6 the actual track record from the United States industry averages</p> <p>7 documented by the Office of Pipeline Safety.</p> <p>8 Q. Okay. Let me ask you about the California State Fire</p> <p>9 Marshall Study, which, as I understand it, is the bar on the far</p> <p>10 left side of the chart?</p> <p>11 A. That's correct.</p> <p>12 Q. Are you familiar with that study?</p> <p>13 A. Somewhat. I read through the study and basically looked</p> <p>14 for what their conclusions were.</p> <p>15 Q. Well, did you happen to look at the vintage of pipelines</p> <p>16 that were reported in that study? In other words, when the</p> <p>17 pipelines were constructed that were reflected in that study?</p> <p>18 A. I didn't go back and look specifically, but the study was</p> <p>19 published in 1993, for example, and it covered a 10- or 12-year</p> <p>20 period prior to that. So it would include pipelines that were</p> <p>21 installed -- would have been installed by that time before the</p> <p>22 1980s or early 1980s, I would expect.</p> <p>23 Q. Okay. So you don't know whether this California Fire</p> <p>24 Marshall Study includes pipelines that may have been constructed</p> <p>25 in the 1940s, '50s, and '60s?</p>	<p style="text-align: right;">843</p> <p>1 portion of the chart?</p> <p>2 A. No, sir. I did not.</p> <p>3 Q. And I think you had some surrebuttal testimony that</p> <p>4 referenced the Clearbrook incident where the incident was</p> <p>5 alleged to have occurred on Enbridge line 3?</p> <p>6 A. Yes.</p> <p>7 Q. So that would indicate that at least in certain locations</p> <p>8 of the Enbridge system it may have as many as three or possibly</p> <p>9 four pipelines in each mile of right of way?</p> <p>10 A. I would say that's correct.</p> <p>11 Q. And are there perhaps instances where there may be as many</p> <p>12 as seven or eight Enbridge lines in a mile of right of way?</p> <p>13 A. Not that I know of.</p> <p>14 Q. If you included miles of spill -- sorry. If you included</p> <p>15 spills per mile of right of way, and if that right of way</p> <p>16 included three or four individual pipelines, would that not tend</p> <p>17 to have overstated the mile of spills on a per pipeline basis?</p> <p>18 A. In the case of Enbridge, that would be the case. I think</p> <p>19 there were some -- some instances when they would publish the</p> <p>20 total miles of pipeline that they would have. And I think that</p> <p>21 it -- if memory serves me correctly, it was somewhere around</p> <p>22 25 to 30 percent, I think, that this would be understated, their</p> <p>23 mileage would be understated when using the terms of right of</p> <p>24 way instead of mileage.</p> <p>25 Q. So for 70 percent of their system then this chart would be</p>
<p style="text-align: right;">842</p> <p>1 A. It may. It may.</p> <p>2 Q. It may well. Do you think that's likely?</p> <p>3 A. I would say that would be my expectation.</p> <p>4 Q. Okay. Then let's look at the second set of bars, which is</p> <p>5 denoted Enbridge Liquid Pipeline Spill Frequency Rate.</p> <p>6 Where did you obtain that data?</p> <p>7 A. I got that directly from Enbridge from their Corporate</p> <p>8 Social Responsibility Reports and their Employee Health and</p> <p>9 Safety Reports.</p> <p>10 Q. And do you know what the vintage of the pipelines would be</p> <p>11 that are reflected in the data shown in that part of your chart?</p> <p>12 A. Again, I don't know. It would include their entire</p> <p>13 installed infrastructure.</p> <p>14 Q. And do you know when Enbridge began constructing pipelines?</p> <p>15 A. No, sir. I don't.</p> <p>16 Q. I noticed that the heading of that chart indicates actual</p> <p>17 reported spills per 1,845 miles of right of way; is that</p> <p>18 correct?</p> <p>19 A. Yes. In the case of Enbridge I used miles of right of way</p> <p>20 because in their -- in their documentation they expressed their</p> <p>21 mileage in terms of right of way instead of miles of pipeline.</p> <p>22 And I think they do that because they have some pipelines where</p> <p>23 there is collocated pipe.</p> <p>24 Q. So did you investigate how many pipelines were included in</p> <p>25 each of those miles of right of way that are reflected in this</p>	<p style="text-align: right;">844</p> <p>1 overstated; is that right?</p> <p>2 A. I'm not sure I would state it quite that way.</p> <p>3 Q. How would you state it?</p> <p>4 A. I guess I would state it that from my perspective looking</p> <p>5 at these numbers here they might be overstated by, say, 25 or</p> <p>6 30 percent in terms of the number of spills that are listed on</p> <p>7 here, if it was actually expressed in terms of miles instead of</p> <p>8 in terms of right of way.</p> <p>9 So, for instance, if you look at, say, 2003, '04, and '05,</p> <p>10 excuse me, where these numbers are actually showing up in, say,</p> <p>11 the higher teens, I would expect that if this were expressed in</p> <p>12 terms of mileage, those would be closer to the lower teens than</p> <p>13 they would be the upper teens.</p> <p>14 Q. Well, if there were four pipelines in a mile of right of</p> <p>15 way, would there not be the potential at least that there could</p> <p>16 be four times the likelihood of spill as opposed to a single</p> <p>17 pipeline in that right of way?</p> <p>18 A. I would say that that -- I would agree with that.</p> <p>19 Q. So in that instance the numbers reflected in this chart</p> <p>20 would be overstated, would they not?</p> <p>21 A. Yes. For the system over all, I would say that these</p> <p>22 numbers for Enbridge are overstated to the extent that I</p> <p>23 explained. I would expect that these numbers instead of being</p> <p>24 in the high teens like that over the system overall, they would</p> <p>25 be closer to the lower teens.</p>

<p style="text-align: right;">845</p> <p>1 Q. Well, you expressed some concerns about the credibility and</p> <p>2 believability of the Applicant's numbers.</p> <p>3 Can I ask you why you didn't correct this chart to reflect</p> <p>4 the fact that there are multiple pipelines and miles of right of</p> <p>5 way on the Enbridge system?</p> <p>6 A. The thing I wanted to do with this chart is express it</p> <p>7 exactly the way that Enbridge did in their Corporate Social</p> <p>8 Responsibility Reports. And since they used miles of right of</p> <p>9 way instead of miles of pipeline, I didn't want to change those</p> <p>10 numbers because I would probably have to estimate how many miles</p> <p>11 there were instead of how many miles -- excuse me, how many</p> <p>12 miles of pipeline there were as opposed to how many miles of</p> <p>13 right of way. So I kept the numbers exactly the way they had</p> <p>14 expressed them.</p> <p>15 Q. And did you clarify in your direct testimony with respect</p> <p>16 to this chart that the numbers as you've discussed here today</p> <p>17 could well be overstated?</p> <p>18 A. I don't know if I did that. That's why I put it here that</p> <p>19 that was in miles of right of way. I don't know if I explained</p> <p>20 to the same degree here that some of these were higher than they</p> <p>21 would have been if they were expressed in terms of miles of</p> <p>22 pipeline.</p> <p>23 Q. Okay. Let's look at the next set of bars, which is denoted</p> <p>24 U.S. Industry Average Spill Frequency Rate Per 1,845 Miles of</p> <p>25 Pipe.</p>	<p style="text-align: right;">847</p> <p>1 A. Well, that's why you use a spill frequency rate where it's</p> <p>2 done in miles. Each one of these different sources of</p> <p>3 information are all expressed in terms of the number of spills</p> <p>4 per a given length of segment.</p> <p>5 For instance, in general a lot of times when you would see</p> <p>6 this you would see it expressed in terms of thousands, for</p> <p>7 instance, the number of spills per thousand miles of pipe. The</p> <p>8 reason that I didn't use a thousand is because Keystone's</p> <p>9 projection as listed in the frequency volume analysis was</p> <p>10 expressed in terms of 1,845 miles of pipe. So that's why I used</p> <p>11 that segment of pipe.</p> <p>12 But in terms of expressing this, that's why I used a</p> <p>13 statistic like a spill frequency rate in that you can compare</p> <p>14 one system to another system or one company to another company</p> <p>15 or one study to another study.</p> <p>16 MR. WHITE: That's all the questions we have,</p> <p>17 Mr. Smith.</p> <p>18 MR. SMITH: Thank you. Mr. Rasmussen.</p> <p>19 <u>CROSS-EXAMINATION</u></p> <p>20 <u>BY MR. RASMUSSEN:</u></p> <p>21 Q. Mr. Miller, I just want to look at a few of the pages of</p> <p>22 your PowerPoint and ask you about them. The first one would be</p> <p>23 page 15.</p> <p>24 A. All right.</p> <p>25 Q. What does that -- what does that chart show to us?</p>
<p style="text-align: right;">846</p> <p>1 What's the source of that data?</p> <p>2 A. That's from the PHMSA database from the Office of Pipeline</p> <p>3 Safety.</p> <p>4 Q. And what is the vintage of pipelines that's included in the</p> <p>5 PHMSA database?</p> <p>6 A. That would include the entire installed infrastructure so</p> <p>7 there would be the full range. Anywhere from pipes that are</p> <p>8 several decades old to pipes that are new.</p> <p>9 Q. I think you mentioned that you based your analysis on 1,845</p> <p>10 miles of pipe because that was the length of the Keystone</p> <p>11 system; is that correct?</p> <p>12 A. I got that number from the DNV frequency volume analysis.</p> <p>13 Q. Okay. Do you know the length of the Keystone system in the</p> <p>14 United States?</p> <p>15 A. Not right off I don't know, no.</p> <p>16 Q. Okay. Would you agree with me that it might be 1,372</p> <p>17 miles?</p> <p>18 A. I guess I don't know what -- how much it is.</p> <p>19 Q. So you don't know whether it's 1,845 or 1,372? You simply</p> <p>20 don't know what the length of the Keystone system is?</p> <p>21 A. Not in the United States. Not right off. I'm sure it's</p> <p>22 stated in the Application, but I don't know.</p> <p>23 Q. So if you were comparing spill incidents on a pipeline</p> <p>24 system that was 1,845 miles with spill incidents on a pipeline</p> <p>25 that was 1,372 miles, would that be a fair comparison?</p>	<p style="text-align: right;">848</p> <p>1 A. This is what I would call an accident rate comparison</p> <p>2 chart. In the PHMSA databases they keep track of all of the</p> <p>3 incidents or accidents on each of the three separate types of</p> <p>4 energy pipelines. There are gas distribution pipelines, there</p> <p>5 are gas transmission pipelines, and there are hazardous liquid</p> <p>6 pipelines.</p> <p>7 And what you do is you take the mileage as listed in that</p> <p>8 database and then the accidents for each of those types of</p> <p>9 pipeline, and then for each year you can post out what the</p> <p>10 accident rates are per a given length of pipe. And in here the</p> <p>11 segment I chose was per 10,000 miles of pipeline.</p> <p>12 Q. And the Keystone Pipeline would be classified as what?</p> <p>13 A. As a hazardous liquid pipeline. And you can see the</p> <p>14 relationship there that in terms of accident rates, gas</p> <p>15 distribution pipelines have the lowest incident rates. Gas</p> <p>16 transmission pipelines are kind of in the middle. And the</p> <p>17 riskiest type of pipeline in terms of accidents reported would</p> <p>18 be hazardous liquid pipelines.</p> <p>19 Q. Page 16, is that just another graph that essentially shows</p> <p>20 the same thing, just in another way of --</p> <p>21 A. Right. I guess this is similar to the chart that I just</p> <p>22 showed you. Except in this case this is from a general</p> <p>23 accounting office report on pipeline safety. And the difference</p> <p>24 here is that they've expressed this in terms of the number of</p> <p>25 major accidents. And I don't recall what they used to describe</p>

<p style="text-align: right;">849</p> <p>1 or classify a major accident as opposed to any other one that</p> <p>2 would be in the database.</p> <p>3 But you can see from this particular exhibit that the</p> <p>4 relationship between the pipelines holds true in that the</p> <p>5 incident rates are lowest on the natural gas distribution</p> <p>6 pipelines, and they're highest on the hazardous liquid</p> <p>7 pipelines.</p> <p>8 Q. Turn to page 26. What does that chart purport to show?</p> <p>9 A. On page 26 this is the -- in the background there is the</p> <p>10 Accident Summary Statistics Report from PHMSA for hazardous</p> <p>11 liquid pipelines for the period going all the way back to 1986.</p> <p>12 And what it shows here is the amount of oil that has been</p> <p>13 spilled over that time frame.</p> <p>14 You can see there at the bottom there's been a total of</p> <p>15 3.4 million barrels of oil spilled, which is 143 million</p> <p>16 gallons. And as you can see there in the comment box in the</p> <p>17 middle is that hazardous liquid pipelines have spilled more than</p> <p>18 13 times as much oil as Exxon Valdez did in Alaska in 1989 when</p> <p>19 I was working for the company.</p> <p>20 Q. And that was between January 1 of '86 and 9-30-07?</p> <p>21 A. That's correct.</p> <p>22 Q. Look at the photograph you have on page 36. What is that a</p> <p>23 picture of?</p> <p>24 A. I included this -- this was kind of a case study of an</p> <p>25 incident that happened on the TransAlaska Pipeline in the year</p>	<p style="text-align: right;">851</p> <p>1 So it could be almost three times as high as what this leak</p> <p>2 would look like in this photograph.</p> <p>3 Q. Turn to page 41. What does that picture show?</p> <p>4 A. This one is a photograph of what the crews actually did to</p> <p>5 stop the pipeline from leaking. There was a special made clamp</p> <p>6 that was built for this pipeline when the pipeline itself was</p> <p>7 built.</p> <p>8 And basically as you can see from the caption there, it</p> <p>9 took about 36 hours before the crews were finally able to clamp</p> <p>10 this pipeline. And basically 285,000 gallons of oil had leaked</p> <p>11 in that amount of time.</p> <p>12 The thing is it took approximately 36 hours, even though</p> <p>13 they knew immediately where the spill was because it was spotted</p> <p>14 by an aerial surveillance aircraft. And, basically, you know,</p> <p>15 they didn't have any trouble in accessing the site. You can see</p> <p>16 from the photographs that there was no snow or no mud. And the</p> <p>17 weather is fairly good. And they didn't -- they did not have to</p> <p>18 excavate the pipeline, for example.</p> <p>19 So even with all of that, the leak being on top of the</p> <p>20 ground, it still took 36 hours before they were able to stop the</p> <p>21 flow.</p> <p>22 Q. Look at the chart on page 53. What does that show?</p> <p>23 A. Okay. This is from my Exhibit D. And what I tried to do</p> <p>24 there is to go find a sampling of regional crude oil spills.</p> <p>25 You know, we don't have any crude oil spills in South Dakota</p>
<p style="text-align: right;">850</p> <p>1 2001, I believe. And you can see the caption there on that</p> <p>2 photograph is that this pipeline was .46 inches thick and it had</p> <p>3 been shot by a hunter as kind of an act of vandalism.</p> <p>4 And you can see that in the photograph -- or in the comment</p> <p>5 there you can see that the pipeline was leaking through a single</p> <p>6 gunshot at about 132 gallons per minute, close to 8,000 gallons</p> <p>7 an hour.</p> <p>8 Q. How does the thickness of that pipeline compare to the one</p> <p>9 Keystone proposes to build?</p> <p>10 A. This would be a thicker pipeline. This is .46 inches. And</p> <p>11 the Keystone Pipeline I guess I don't recall. It depends based</p> <p>12 on what design factor they use. But this pipeline is a little</p> <p>13 bit thicker.</p> <p>14 Q. Look at page 38. That's the same pipeline from a different</p> <p>15 angle; is that right?</p> <p>16 A. Right. This is a photograph from the same incident from a</p> <p>17 different angle, like you said. And it just -- it gives you an</p> <p>18 indication of what a pipeline leak would be at 500 pounds of</p> <p>19 pressure, which is what it was estimated to be at the point of</p> <p>20 this incident. That's what a leak could look like through a</p> <p>21 gunshot hole.</p> <p>22 The thing is, you know, in the land that I own in -- excuse</p> <p>23 me, in Miner County I'm just downstream from the pump station a</p> <p>24 mile or two. And there, you know, the Keystone Pipeline would</p> <p>25 be operating at close to its highest pressure in terms of psi.</p>	<p style="text-align: right;">852</p> <p>1 because we don't have a crude oil pipeline. So I tried to find</p> <p>2 some spills that were in our region to try to find out what the</p> <p>3 experience has been in other states in our area.</p> <p>4 And on that Exhibit D I have several different categories.</p> <p>5 For instance, I can show that there were pipeline spills that</p> <p>6 involved ground water contamination. There were spills that</p> <p>7 involved surface water contamination. There were spills that</p> <p>8 involved HCAs. And I can show you spills where there were</p> <p>9 multimillion-gallon spills and multimillion-dollar cleanups.</p> <p>10 And on this particular slide on page 53 it is, I've got the</p> <p>11 category that is circled there is a sampling of spills, recent</p> <p>12 spills. You can see they're all here in the last few years, in</p> <p>13 nearby states where surface water contamination was listed as</p> <p>14 part of the record at the Office of Pipeline Safety.</p> <p>15 Q. Turn to page 59. What does that -- where did that diagram</p> <p>16 come from, and what does it show?</p> <p>17 A. Okay. This -- this is a diagram from a crude oil --</p> <p>18 Q. I don't think you're on the right page, are you?</p> <p>19 A. I'm looking on the prior one to get the statistics for that</p> <p>20 diagram.</p> <p>21 Q. I'm sorry.</p> <p>22 A. This is a regional crude oil pipeline spill that was</p> <p>23 discovered in July of 2002 near Cass Lake, Minnesota where</p> <p>24 ground water contamination was indicated as part of the</p> <p>25 record -- or, excuse me. That one is not listed -- that is not</p>

<p style="text-align: right;">853</p> <p>1 listed with the Office of Pipeline Safety, that particular</p> <p>2 incident.</p> <p>3 The source where I got this information is from Enbridge</p> <p>4 itself, which is the company that was involved. Basically what</p> <p>5 they had is a slow leak from the pipeline that's depicted in</p> <p>6 this diagram on page 59. And as you can see, the oil leaked</p> <p>7 from the bottom of the pipeline and migrated downward. And</p> <p>8 this -- the oil is now floating on the ground water there.</p> <p>9 You can see in the diagram in red there are some monitoring</p> <p>10 wells and it shows where the plume from the oil spill is and it</p> <p>11 shows the ground water flow direction and that kind of thing.</p> <p>12 Q. Where did the diagram itself come from?</p> <p>13 A. It came directly from the website that's listed there at</p> <p>14 the top of the page. It comes from www.enbridgecasslake.com.</p> <p>15 So it comes directly from the company itself.</p> <p>16 Q. Let's flip to page 134 then. And I think there was a</p> <p>17 question asked by one of the Commissioners yesterday referencing</p> <p>18 your statement that's referred to on this slide about SCADA</p> <p>19 systems contributing to the severity of hazardous liquid</p> <p>20 pipeline spills.</p> <p>21 A. Okay.</p> <p>22 Q. Can you explain that?</p> <p>23 A. 134 is the report that -- the National Transportation</p> <p>24 Safety Report study concerning SCADA and liquid pipelines -- and</p> <p>25 I think in my recollection of that report is that the NTSB had</p>	<p style="text-align: right;">855</p> <p>1 they're of. They're simply photos in a binder.</p> <p>2 MR. SMITH: Do you understand his objection,</p> <p>3 Mr. Miller?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. SMITH: Maybe, Mr. Rasmussen, do you want to</p> <p>6 undertake doing that?</p> <p>7 Q. Mr. Miller, where did you obtain the photographs that would</p> <p>8 appear on pages 149 through 154 of your PowerPoint?</p> <p>9 A. I got these photographs -- they were available over the</p> <p>10 internet. I got them -- they're listed by a man by the name of</p> <p>11 Don Gromlin (phonetic) from Fort St. John, British Columbia.</p> <p>12 He's the person who took those paragraphs.</p> <p>13 And if you go look at the photograph on page 150, for</p> <p>14 example, that's a photograph of the right of way. It's the</p> <p>15 first photograph that he took in this series. And you can see</p> <p>16 that the pipeline right of way is identified by a TransCanada</p> <p>17 Pipeline sign.</p> <p>18 Q. Okay. I think that's 149 actually has the sign, doesn't</p> <p>19 it, not 150?</p> <p>20 A. Okay. I guess I may be on the wrong page.</p> <p>21 Q. But that's a TransCanada sign we see in that photograph?</p> <p>22 A. That's correct.</p> <p>23 MR. RASMUSSEN: That's all the questions I have.</p> <p>24 MR. SMITH: Thank you. Mr. Hohn.</p> <p>25</p>
<p style="text-align: right;">854</p> <p>1 done investigations into 13 separate pipeline, hazardous liquid</p> <p>2 pipeline incidents, and they noticed there was a trend regarding</p> <p>3 the SCADA systems.</p> <p>4 And basically the result of the study which was to go</p> <p>5 review all of those incidents, the conclusion of the study was</p> <p>6 that in 10 out of 13 of those cases the conclusion was that the</p> <p>7 SCADA system itself in one way or another contributed to the</p> <p>8 severity of the spill.</p> <p>9 Q. And how would it contribute?</p> <p>10 A. In ways where, you know, a SCADA system is a computerized</p> <p>11 system which has a human machine interface. And a lot of those</p> <p>12 are not standard from one company to another. So there are</p> <p>13 situations where the operator doesn't realize what's going on</p> <p>14 with the application, for example, and a spill is not recognized</p> <p>15 or is not stopped as soon as it could have been otherwise.</p> <p>16 Q. 153 is one of a series of photographs regarding a rupture</p> <p>17 of a TransCanada natural gas pipeline; is that right?</p> <p>18 A. That's correct. This particular incident there's several</p> <p>19 photographs of this. This one happened in western Alberta in</p> <p>20 December, early December of 2003. Actually there were two</p> <p>21 separate incidents within a 24-hour period where there was some</p> <p>22 explosions like this. And as you can see --</p> <p>23 MR. WHITE: Mr. Smith, I know there's been a wide</p> <p>24 degree of latitude on foundation for pro se witnesses, but I</p> <p>25 have no way of knowing where these photos came from or what</p>	<p style="text-align: right;">856</p> <p>1 <u>CROSS-EXAMINATION</u></p> <p>2 BY MR. HOHN:</p> <p>3 Q. On page 4 of your direct testimony and various times in</p> <p>4 your testimony you refer to the National Transportation Safety</p> <p>5 Board.</p> <p>6 What is your understanding of what the National</p> <p>7 Transportation Safety Board is? What's its function?</p> <p>8 A. I guess from my perspective one of the things they do is</p> <p>9 investigate significant incidents involving transportation</p> <p>10 systems, significant accidents or failures.</p> <p>11 Q. And once they complete the investigation do they prepare</p> <p>12 reports?</p> <p>13 A. Yes. I would say that's true.</p> <p>14 Q. And some of the information you've presented or part of the</p> <p>15 information you've presented has come from some of those</p> <p>16 reports. Is that fair to say?</p> <p>17 A. Yes. I did use some of these NTSB reports to get some of</p> <p>18 the information that I have included here.</p> <p>19 Q. And those are official government documents, aren't they?</p> <p>20 A. I would expect that they are.</p> <p>21 Q. You were employed with Exxon during the Exxon Valdez</p> <p>22 accident and spill?</p> <p>23 A. That's correct.</p> <p>24 Q. And in terms of volume you mentioned -- you referenced the</p> <p>25 volume of that spill in relation to pipeline spills, did you</p>

<p>857</p> <p>1 not?</p> <p>2 A. Yes. Yes, I did.</p> <p>3 Q. I may have missed or not understood exactly what you were</p> <p>4 saying there. But could you reference that again? What was the</p> <p>5 comparison? How many gallons of oil in the Exxon spill versus</p> <p>6 pipeline spills?</p> <p>7 A. I got -- I used the summary report that was in my</p> <p>8 Exhibit B, which is the report that's directly calculated from</p> <p>9 the Office of Pipeline Safety. And if you look on the totals</p> <p>10 line there, I think there were something like 3.4 million</p> <p>11 barrels, which would be equivalent to 143 million gallons.</p> <p>12 In terms of reference, the Exxon Valdez spill was about</p> <p>13 10 and a half million gallons. So, in essence, hazardous liquid</p> <p>14 pipelines during the time frame listed on that report had</p> <p>15 spilled something like 13 times as much oil as the Exxon Valdez</p> <p>16 did.</p> <p>17 Q. Okay. The Exxon Valdez spill occurred what year?</p> <p>18 A. 1989.</p> <p>19 Q. To your knowledge has that site been completely cleaned up,</p> <p>20 remediated?</p> <p>21 A. I think that they've -- the company has completed its</p> <p>22 cleanup activities, I would say.</p> <p>23 Q. Did Exxon remove all the oil that spilled from the shore</p> <p>24 and the impact area?</p> <p>25 A. Actually since that spill was in water, I think a</p>	<p>859</p> <p>1 A. No, I do not.</p> <p>2 Q. In any of your research did you find evidence of the</p> <p>3 approximate distance a dissolved plume from crude oil releases</p> <p>4 would travel in sand or clay soils?</p> <p>5 A. No, I did not. I did not look into that. I was looking</p> <p>6 more in terms of the number of spills and the volume of spills.</p> <p>7 I didn't look into the effects so much, so to speak.</p> <p>8 Q. I'm looking now at page 16 of your direct testimony. Do</p> <p>9 you still stand by the statement that since the proposed</p> <p>10 Keystone Pipeline is a hazardous liquid pipeline, gas</p> <p>11 transmission pipelines are largely irrelevant?</p> <p>12 I'm relating that to the pictures you showed of some gas</p> <p>13 transmission line explosions.</p> <p>14 A. In terms of accident rates, that's why I was saying that</p> <p>15 gas transmission pipelines and gas distribution pipelines were</p> <p>16 irrelevant in terms of trying to determine or ascertain what the</p> <p>17 track record would be.</p> <p>18 The reason that I included those pictures from the gas</p> <p>19 pipelines that were in the PowerPoint was because prior to</p> <p>20 coming to this hearing I was not able to find any evidence of</p> <p>21 that spill in TransCanada's Corporate Social Responsibility</p> <p>22 Report.</p> <p>23 Q. And we cleared that up prior to today?</p> <p>24 A. Yes.</p> <p>25 MS. SEMMLER: Okay. Thank you. Staff is complete.</p>
<p>858</p> <p>1 significant amount of the oil was lost.</p> <p>2 Q. Never recovered?</p> <p>3 A. Never recovered.</p> <p>4 MR. HOHN: I have no further questions. Thank you.</p> <p>5 MR. SMITH: Thank you. Staff, questions of</p> <p>6 Mr. Miller?</p> <p>7 MS. SEMMLER: I do have a few questions, Mr. Miller.</p> <p>8 <u>CROSS-EXAMINATION</u></p> <p>9 <u>BY MS. SEMMLER:</u></p> <p>10 Q. On page 15 of your PowerPoint there's a chart. Do the blue</p> <p>11 colored hazardous liquid pipeline statistics there, does that</p> <p>12 include crude oil among other types of hazardous liquids?</p> <p>13 A. Yes. In terms of hazardous liquids, that would include</p> <p>14 crude oil and refined products.</p> <p>15 Q. Do you know what portion of that would be restricted to</p> <p>16 crude oil?</p> <p>17 A. No, I do not.</p> <p>18 Q. On page 26 of your PowerPoint, just want to be sure I</p> <p>19 understand you are comparing in that chart 10 years of data</p> <p>20 versus a one-time spill; is that correct?</p> <p>21 A. Actually that would be more than 20 years of data.</p> <p>22 Q. Versus a one-time --</p> <p>23 A. Versus a one-time incident.</p> <p>24 Q. Then going to 59, please. The Cass Lake program. Do you</p> <p>25 know how far the dissolved plume traveled?</p>	<p>860</p> <p>1 MR. SMITH: Okay. I'm sorry. I was writing myself.</p> <p>2 Commissioner Kolbeck, do you have questions?</p> <p>3 COMMISSIONER KOLBECK: Yeah. Mr. Miller, have you</p> <p>4 ever testified before on a crude oil pipeline?</p> <p>5 THE WITNESS: No, sir.</p> <p>6 COMMISSIONER KOLBECK: Okay. Your statement about</p> <p>7 believability, does that go for the Applicant and the</p> <p>8 Interveners or strictly for the Applicant?</p> <p>9 THE WITNESS: I would say that's fair.</p> <p>10 COMMISSIONER KOLBECK: Two-way street?</p> <p>11 THE WITNESS: Fair play. Two-way street.</p> <p>12 COMMISSIONER KOLBECK: And your reference to the</p> <p>13 1,800 miles, the 1,800-mile study to the 1,300-mile study as</p> <p>14 Mr. White was insinuating, it's my understanding that your</p> <p>15 numbers really wouldn't change that much. Am I thinking that</p> <p>16 correctly?</p> <p>17 Because the other part of your data would still remain</p> <p>18 constant? Am I understanding that?</p> <p>19 When you took apart the total miles of the route,</p> <p>20 1,845 miles, even if you were to change it to 13, your data</p> <p>21 wouldn't change that much; correct?</p> <p>22 THE WITNESS: I would say that's correct. That's why</p> <p>23 I used a spill frequency rate because in some respect it's</p> <p>24 portable, allows you to look at, say, different lengths of</p> <p>25 pipeline or from a different company and so forth.</p>



<p style="text-align: right;">861</p> <p>1 COMMISSIONER KOLBECK: So the end number wouldn't</p> <p>2 change that much if -- it would be apples to apples, oranges to</p> <p>3 oranges if the miles are changed.</p> <p>4 THE WITNESS: Right.</p> <p>5 COMMISSIONER KOLBECK: When you were talking about</p> <p>6 crude oil or oil pipelines actually having more damage, do you</p> <p>7 know if that includes -- is that just the main line pipe, or</p> <p>8 does that include services too like from a natural gas line to a</p> <p>9 home? Do you know if that's included in part of the pipeline?</p> <p>10 And when you were talking about natural gas pipelines</p> <p>11 compared to oil pipelines, oil being more dangerous, do you know</p> <p>12 if that natural gas pipelines include the service part, in other</p> <p>13 words, from the main line to the house? Are they figured into</p> <p>14 those statistics?</p> <p>15 THE WITNESS: I would expect that those were</p> <p>16 considered gas distribution pipelines as opposed to gas</p> <p>17 transmission pipeline.</p> <p>18 COMMISSIONER KOLBECK: I realize that the Canada</p> <p>19 pipeline is above ground, and this one will be -- if it's built,</p> <p>20 is below ground.</p> <p>21 Would you be willing to give an opinion as to the</p> <p>22 effects of the pressure underground compared to above ground, or</p> <p>23 would that be someone else's forte?</p> <p>24 THE WITNESS: I would say that would probably be</p> <p>25 somebody else's forte. I guess I would expect that it would</p>	<p style="text-align: right;">863</p> <p>1 COMMISSIONER KOLBECK: Right. The research that I did</p> <p>2 on SCADA systems, I think we're looking at the same report. And</p> <p>3 the executive summary, it actually states that 13 hazardous</p> <p>4 liquid pipeline accidents of the Transportation Safety Board</p> <p>5 said that 10 of them actually contributed.</p> <p>6 But if you actually go to page 36 of that report, it</p> <p>7 kind of tells a little bit different story. It actually says</p> <p>8 that 99 percent of all SCADA operators feel that the SCADA</p> <p>9 system makes a pipeline safer.</p> <p>10 Do you know -- I kind of got the impression from that</p> <p>11 report that a SCADA system makes it safer.</p> <p>12 THE WITNESS: Oh, I would most definitely agree with</p> <p>13 that. I guess the whole point that I wanted to point out about</p> <p>14 SCADA systems in general is, like I say, I'm a computer person</p> <p>15 myself. I have a degree in computer science. I think things</p> <p>16 like SCADAs are great.</p> <p>17 The only thing I wanted to point out is that I don't</p> <p>18 think that a SCADA necessarily can prevent a catastrophic spill.</p> <p>19 And there are some other examples that I have.</p> <p>20 For instance, there was a spill in Canada in 2001 near</p> <p>21 Hardisty, Alberta where the Keystone Pipeline starts. In that</p> <p>22 particular instance it was a material failure. The pipe</p> <p>23 ruptured. And, you know, the SCADA system performed well within</p> <p>24 tolerance. The operator noticed it right away, shut down the</p> <p>25 pipeline, isolated the pipeline all within tolerance according</p>
<p style="text-align: right;">862</p> <p>1 still leak underground, but what kind of effect -- say, soil</p> <p>2 against the pipe, if it would lessen it, apply pressure against</p> <p>3 a hole, I guess I really don't know.</p> <p>4 COMMISSIONER KOLBECK: And in your exhibit that showed</p> <p>5 the 36 hours of pipeline that was leaking, you said that it took</p> <p>6 36 hours to stop the flow.</p> <p>7 Was it 36 flowers to stop the flow or 36 hours to</p> <p>8 patch the hole? Do you know?</p> <p>9 THE WITNESS: It was 36 hours to stop the flow, from</p> <p>10 what I understand. By the time they got that clamp on there and</p> <p>11 stopped the leak it was 36 hours.</p> <p>12 COMMISSIONER KOLBECK: Okay. Because your slide says</p> <p>13 that the pipeline was shut down immediately so I guess I would</p> <p>14 think that would stop the flow.</p> <p>15 THE WITNESS: Well, yeah. I guess the flow -- the</p> <p>16 pipeline was shut down. Although, as you could see from the</p> <p>17 photographs, it did remain pressurized I suspect because there's</p> <p>18 significant changes in elevation in Alaska, for example, where</p> <p>19 gravitational pressure could still be applied.</p> <p>20 COMMISSIONER KOLBECK: Did you figure statistical</p> <p>21 probability for a leak in South Dakota?</p> <p>22 THE WITNESS: No, I did not. That's one thing that I</p> <p>23 really want to point out is that when I look at all of this I'm</p> <p>24 looking at historical -- historical statistics. I'm not</p> <p>25 providing a forecast.</p>	<p style="text-align: right;">864</p> <p>1 to the Transportation Safety Board Report.</p> <p>2 However, it was still more than a million gallons even</p> <p>3 though the pipeline was shut down within minutes. And part of</p> <p>4 that was because crews couldn't find the spill. I mean, they</p> <p>5 literally flew over the right of way multiple times. According</p> <p>6 to the report, they literally walked over it multiple times so</p> <p>7 there was a significant drain down of the pipe, even though the</p> <p>8 SCADA system had shut down the pipeline.</p> <p>9 COMMISSIONER KOLBECK: Okay. I just wanted to make</p> <p>10 sure that we were talking about the same --</p> <p>11 THE WITNESS: SCADAs are great. And, you know, there</p> <p>12 are improvements. And I think one of the things in that report</p> <p>13 was that there was inconsistencies in how some SCADA systems</p> <p>14 were developed and implemented and that kind of thing. And I</p> <p>15 think those perhaps were where the problems came from.</p> <p>16 COMMISSIONER KOLBECK: That's all, Mr. Smith. Thank</p> <p>17 you.</p> <p>18 MR. SMITH: Other Commissioner questions?</p> <p>19 CHAIRMAN JOHNSON: I think, Mr. Miller, I'm hoping you</p> <p>20 can educate me more than maybe you even put evidence into the</p> <p>21 record. But my understanding, and correct me, of your</p> <p>22 understanding of the testimony over the last two days is</p> <p>23 different -- is that the most likely -- the failures on a crude</p> <p>24 oil pipeline might be caused most likely by, first, external</p> <p>25 corrosion and, second, third-party damage.</p>

<p style="text-align: right;">865</p> <p>1 Is that your understanding as well?</p> <p>2 THE WITNESS: I would say those could be two of the</p> <p>3 top causes.</p> <p>4 CHAIRMAN JOHNSON: You've presented some information,</p> <p>5 some data, that hazardous material pipelines have a higher</p> <p>6 accident rate than say natural gas pipelines. I'm trying to</p> <p>7 understand why that is, if the two largest causes of failures</p> <p>8 would be external corrosion and third-party damage.</p> <p>9 Do you have any insight that might help me understand</p> <p>10 the differences?</p> <p>11 THE WITNESS: To tell you the truth, I don't think</p> <p>12 that I do. I got the statistics from PHMSA, and they pretty</p> <p>13 much report them exactly the way they are without going into</p> <p>14 what specific causes were for each one of those. It's in terms</p> <p>15 of miles of pipeline so they're all expressed in terms of miles</p> <p>16 of pipeline.</p> <p>17 CHAIRMAN JOHNSON: And this is more an editorial</p> <p>18 comment, not necessarily a question. I mean, to me I'm hoping</p> <p>19 at some point over the course of the next week or so I can</p> <p>20 understand why there's such a difference in these numbers.</p> <p>21 Because I think understanding is important. You've</p> <p>22 got to have understanding to make use of data. At least on a</p> <p>23 forecast and forward-looking perspective I'm struggling with</p> <p>24 that.</p> <p>25 You note on your surrebuttal testimony, the final</p>	<p style="text-align: right;">867</p> <p>1 indicates older pipelines have a higher rate of incident than</p> <p>2 newer pipelines?</p> <p>3 THE WITNESS: I don't know if I've come across</p> <p>4 anything specific regarding those. But I think in general terms</p> <p>5 that would be my expectation.</p> <p>6 CHAIRMAN JOHNSON: Is that a function of -- is it</p> <p>7 possible that's a function of two things, first of age of the</p> <p>8 pipeline and then, secondly, the design procedures and practices</p> <p>9 that were used at the era that that pipeline was installed?</p> <p>10 THE WITNESS: I would say it's probably a combination</p> <p>11 of factors. In many respects I would think that we have better</p> <p>12 materials today than ever. We have better installation</p> <p>13 practices, perhaps, than ever. There are better standards</p> <p>14 today.</p> <p>15 CHAIRMAN JOHNSON: Is it difficult to analyze the --</p> <p>16 is it difficult to analyze the safety of newer pipelines because</p> <p>17 we don't have as much track record because they haven't</p> <p>18 essentially had an opportunity to age yet?</p> <p>19 THE WITNESS: I would say, yeah, that is -- it's</p> <p>20 obviously difficult to find a lot of incidents regarding newer</p> <p>21 pipelines if for no other reason than, for example, they haven't</p> <p>22 had the time it might take to corrode, for example.</p> <p>23 CHAIRMAN JOHNSON: In your data analysis, did you do</p> <p>24 any comparison between the incident rate of old pipelines in</p> <p>25 the, say, first decade they were in the ground compared to the</p>
<p style="text-align: right;">866</p> <p>1 page, that based on information in a report that you reviewed,</p> <p>2 incident rates on C-O-N-C-A-W-E pipelines, which I believe are</p> <p>3 in Europe, are much lower than those in the U.S.</p> <p>4 Am I stating that right?</p> <p>5 THE WITNESS: Yes.</p> <p>6 CHAIRMAN JOHNSON: Did your research uncover any</p> <p>7 reason why European pipelines have a lower incident of failure</p> <p>8 than pipelines in North America?</p> <p>9 THE WITNESS: There are a couple of potential</p> <p>10 indications included in that report. One of them is that they</p> <p>11 employ these intelligent pigs. They do a lot of inspections. I</p> <p>12 think they do up to something like I think the report says close</p> <p>13 to 25 percent of their installed mileage has been pigged each of</p> <p>14 the last few years.</p> <p>15 So I guess if you go forward from that, you can kind</p> <p>16 of get the impression that the entire infrastructure would be</p> <p>17 pigged about every four to five years.</p> <p>18 CHAIRMAN JOHNSON: Do you know if the Keystone</p> <p>19 Pipeline plans to make use of intelligent pigs?</p> <p>20 THE WITNESS: I think they've stated that they do.</p> <p>21 And I think that's a requirement now going forward.</p> <p>22 CHAIRMAN JOHNSON: The difficulty in doing historical</p> <p>23 analysis, and no doubt you know better than I do, I think data</p> <p>24 indicates -- that's testimony.</p> <p>25 In your research you come across information that</p>	<p style="text-align: right;">868</p> <p>1 incident rate of newer pipelines in the first decade they were</p> <p>2 in the ground?</p> <p>3 I'm attempting to in my own mind control for the age</p> <p>4 factor.</p> <p>5 THE WITNESS: Uh-huh. There was some of that in one</p> <p>6 of my exhibits. It does kind of give an indication of some of</p> <p>7 the effects that it took in terms of the amount of time. Let me</p> <p>8 see if I can find the right exhibit.</p> <p>9 Yeah. If you go to my Exhibit M that accompanied my</p> <p>10 direct testimony, for example.</p> <p>11 CHAIRMAN JOHNSON: Okay. Exhibit M. I'm there.</p> <p>12 THE WITNESS: Okay. If you're there, this is a list</p> <p>13 of pipeline ruptures that happened in Canada. And one of the</p> <p>14 attributes in here was that the year that the pipe was installed</p> <p>15 was in there so you can calculate the age of the pipe at the</p> <p>16 time of the failure.</p> <p>17 If you look down there at the bottom, there's a list</p> <p>18 of 26 pipeline ruptures over this period. And you can see that</p> <p>19 I've broken it down in terms of the number of years that had</p> <p>20 elapsed prior to the ruptures.</p> <p>21 For instance, you can see that in the first 10 years,</p> <p>22 0 to 10 years, there were no ruptures at all.</p> <p>23 CHAIRMAN JOHNSON: Given the relatively small sample</p> <p>24 size here, would you characterize this data as more anecdotal</p> <p>25 than system-wide analysis?</p>

<p style="text-align: right;">869</p> <p>1 THE WITNESS: Yeah. Yes. Like I say, there is a</p> <p>2 limited sample here, no doubt.</p> <p>3 CHAIRMAN JOHNSON: On page 36 of your PowerPoint I</p> <p>4 think you -- you discuss the thickness of the -- is this the</p> <p>5 Alaskan pipeline?</p> <p>6 THE WITNESS: Yes. That's the TransAlaskan Pipeline.</p> <p>7 CHAIRMAN JOHNSON: And you note the thickness of this</p> <p>8 pipe. In your research did you come across any indication of</p> <p>9 how -- of the strength or any other design characteristics of</p> <p>10 this pipe?</p> <p>11 THE WITNESS: Not any other design characteristics</p> <p>12 other than that there were statements that they had suspected</p> <p>13 there might be foul play like this. So there were some</p> <p>14 precautions taken in order to prevent something like this.</p> <p>15 And, in fact, there have been over the years a number</p> <p>16 of gunshots fired at the pipeline and had not pierced it in the</p> <p>17 past.</p> <p>18 CHAIRMAN JOHNSON: To your knowledge does the</p> <p>19 integrity of a pipeline -- do a number of factors play into</p> <p>20 that, a number of design factors?</p> <p>21 THE WITNESS: I would say that's probably not my area</p> <p>22 of expertise, but I would expect that.</p> <p>23 CHAIRMAN JOHNSON: Okay. If that's the case, would it</p> <p>24 be difficult to ascertain the strength of the pipeline if you</p> <p>25 only had one variable, one piece of information?</p>	<p style="text-align: right;">871</p> <p>1 my questions paralleled those that were already asked by my</p> <p>2 fellow Commissioners. But I would like to turn to Exhibit M</p> <p>3 again.</p> <p>4 I had done some of those calculations that you just</p> <p>5 referred to and found it rather interesting. But I need to know</p> <p>6 on the very first column, the TSB number, would I be correct in</p> <p>7 assuming that if that number is different, that the pipeline is</p> <p>8 not the same pipeline, or could some of these be the very same</p> <p>9 pipeline? The incidences at the top. Let's take the top nine</p> <p>10 or eight that are the Enbridge failures.</p> <p>11 THE WITNESS: Uh-huh.</p> <p>12 COMMISSIONER HANSON: On the far left it shows a TSB</p> <p>13 number.</p> <p>14 THE WITNESS: Right.</p> <p>15 COMMISSIONER HANSON: What does that stand for?</p> <p>16 THE WITNESS: That's the Transportation Safety Board</p> <p>17 report number.</p> <p>18 COMMISSIONER HANSON: Okay. So some of these could be</p> <p>19 on the very same pipe.</p> <p>20 THE WITNESS: Yes. That is true.</p> <p>21 COMMISSIONER HANSON: Okay.</p> <p>22 THE WITNESS: It could be on the same pipeline.</p> <p>23 COMMISSIONER HANSON: All right. I needed to know</p> <p>24 that because as I went through and calculated I noticed that the</p> <p>25 age of the pipe, for instance, starting from the top it was '68,</p>
<p style="text-align: right;">870</p> <p>1 THE WITNESS: Right. That's true.</p> <p>2 CHAIRMAN JOHNSON: On slide 58 of your presentation</p> <p>3 you note that the Enbridge Cass Lake incident, that there was no</p> <p>4 OPS report for that. Do you just happen to know why no report</p> <p>5 was required to be filed or was filed?</p> <p>6 THE WITNESS: I don't know. In terms of size, it</p> <p>7 would meet the requirements. I've sent e-mails to try to find</p> <p>8 out why not -- why it has not. I've never gotten a response</p> <p>9 back.</p> <p>10 I think it -- one potential thing is that it could</p> <p>11 have to do with jurisdictions. For instance, in this particular</p> <p>12 case this is on the Leech Lake Indian Reservation and perhaps --</p> <p>13 I'm just guessing here -- that the Department of Transportation</p> <p>14 may not have jurisdiction over some local authority.</p> <p>15 CHAIRMAN JOHNSON: Thanks very much. I don't have</p> <p>16 anything right now, Mr. Smith, anything else.</p> <p>17 MR. SMITH: Commissioner Hanson.</p> <p>18 COMMISSIONER HANSON: Thank you, Mr. Smith.</p> <p>19 Good morning, Mr. Miller.</p> <p>20 THE WITNESS: Good morning.</p> <p>21 COMMISSIONER HANSON: Appreciate all of the trouble</p> <p>22 that you went through and the information that you've provided</p> <p>23 us with here.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 COMMISSIONER HANSON: The good news is that a lot of</p>	<p style="text-align: right;">872</p> <p>1 '72, '68, '68, '68, '65, '68, and '63. And, of course, that's</p> <p>2 1968. 19s.</p> <p>3 So in view of the discussion that you had previously</p> <p>4 with Mr. Johnson as I was looking at those trying to figure</p> <p>5 out -- of course, all of the comparisons that you're doing here</p> <p>6 with data, trying to figure out the likelihood of a spill</p> <p>7 because we're all very interested in the potential for some</p> <p>8 failure.</p> <p>9 Are you familiar with the quality of construction, the</p> <p>10 practices, best practices, that were completed in the '60s and</p> <p>11 the '70s on pipes as comparison -- and this is the second part</p> <p>12 of the question, as comparison of those pipelines with today's</p> <p>13 pipelines construction.</p> <p>14 THE WITNESS: I guess I'm not really that familiar in</p> <p>15 depth, although my expectation would be that things are much</p> <p>16 better today than they were back then.</p> <p>17 COMMISSIONER HANSON: As you testified earlier. But</p> <p>18 you're not intimately familiar with the best practices that were</p> <p>19 done in '68 and/or the best practices that are done today?</p> <p>20 THE WITNESS: No.</p> <p>21 COMMISSIONER HANSON: Okay. I think you've been here</p> <p>22 for every minute of the session so far starting on Monday. And</p> <p>23 obviously you've prepared quite a bit for this. So I don't have</p> <p>24 to ask you if you were here during the discussion on check</p> <p>25 valves.</p>

<p style="text-align: right;">873</p> <p>1 You were here, weren't you?</p> <p>2 THE WITNESS: Yes.</p> <p>3 COMMISSIONER HANSON: Okay. In light of the -- well,</p> <p>4 let me ask first, are you aware of whether there were any check</p> <p>5 valves on the pipeline that was ruptured by the bullet that</p> <p>6 you've shown on numerous exhibits in your PowerPoint, which we</p> <p>7 refer to as page 59?</p> <p>8 THE WITNESS: I'm not aware of where any of the valves</p> <p>9 would be on that pipeline, no.</p> <p>10 COMMISSIONER HANSON: Okay.</p> <p>11 THE WITNESS: Not right off the top of my head.</p> <p>12 COMMISSIONER HANSON: It would seem that if there were</p> <p>13 one closer to the rupture -- and they had obviously</p> <p>14 automatically shut it down so we are assuming that the pressure</p> <p>15 of 500 pounds per square inch continued the flow, outflow.</p> <p>16 If there had been a check flow further down in that</p> <p>17 pipe, I guess we can also assume that that would have closed and</p> <p>18 stopped some of the flow.</p> <p>19 Given the light of the testimony that was given</p> <p>20 previously regarding check valves, would you surmise that a leak</p> <p>21 of this nature, a rupture of this nature, would be lessened?</p> <p>22 THE WITNESS: Do you mean for the Keystone --</p> <p>23 COMMISSIONER HANSON: Correct.</p> <p>24 THE WITNESS: -- pipeline? Yeah. There are numerous</p> <p>25 differences between this particular pipeline in Alaska relative</p>	<p style="text-align: right;">875</p> <p>1 from the Office of Pipeline Safety, which would include the</p> <p>2 entire infrastructure for hazardous liquid pipelines in the</p> <p>3 United States. So that those would be very broad areas.</p> <p>4 COMMISSIONER HANSON: On page 3 of your surrebuttal</p> <p>5 you point to the Burnaby spills, and you have the statement</p> <p>6 that, Third-party activities, including excavation, remain a</p> <p>7 risk regarding pipelines. I certainly can understand that with</p> <p>8 the older pipelines.</p> <p>9 Did you compile any data, or did you attempt to</p> <p>10 analyze the proposed Keystone Pipeline with, for instance, the</p> <p>11 Burnaby Pipeline or the older ones, the integrity of those</p> <p>12 pipelines, the likelihood of damage from third parties?</p> <p>13 THE WITNESS: No, I did not.</p> <p>14 COMMISSIONER HANSON: You were here for the</p> <p>15 testimony -- I think it's Ms. Kothari -- it could have been</p> <p>16 Mr. Gray -- referring to the 51 tons of pressure that was</p> <p>17 necessary in order to pierce the pipeline?</p> <p>18 THE WITNESS: Yes.</p> <p>19 COMMISSIONER HANSON: Were you aware of that prior to</p> <p>20 your contention that third-party activities could create</p> <p>21 challenges?</p> <p>22 THE WITNESS: I guess I don't know what the exact</p> <p>23 number would have been. I guess I don't recall.</p> <p>24 COMMISSIONER HANSON: Are you as concerned now knowing</p> <p>25 that, that the structure of that pipeline and the strength of it</p>
<p style="text-align: right;">874</p> <p>1 to the Keystone Pipeline. And one of -- a couple of the very</p> <p>2 obvious ones would be the Keystone Pipeline would be</p> <p>3 underground.</p> <p>4 COMMISSIONER HANSON: Correct.</p> <p>5 THE WITNESS: And not be quite so susceptible to</p> <p>6 vandalism. The other one would be that -- excuse me. I guess</p> <p>7 my expectation of being a landowner in rural South Dakota and</p> <p>8 lived out here, I would say that the -- you know, the terrain of</p> <p>9 the country would be much, much flatter so that a pipeline would</p> <p>10 not in my expectation stay pressurized like that. You wouldn't</p> <p>11 have as much drain down, especially over that long of a period.</p> <p>12 COMMISSIONER HANSON: At least in most areas.</p> <p>13 THE WITNESS: That would be my expectation.</p> <p>14 COMMISSIONER HANSON: Did you conduct any data</p> <p>15 analysis for spill volume rates for -- exclusively for</p> <p>16 TransCanada Pipeline spills, failures?</p> <p>17 THE WITNESS: No, I did not.</p> <p>18 COMMISSIONER HANSON: So your -- I guess we refer to</p> <p>19 them as SVRs, your spill volume rates, are for -- are analysis</p> <p>20 of all of the transporters' pipelines.</p> <p>21 THE WITNESS: Right. On the spill volume rates there</p> <p>22 were a couple of different sources of information there. I</p> <p>23 did -- one of them was on Enbridge again and that spill volume</p> <p>24 rate would include their entire installed infrastructure of</p> <p>25 crude oil pipelines. And another source of that information was</p>	<p style="text-align: right;">876</p> <p>1 in comparison to, for instance, these older ones?</p> <p>2 THE WITNESS: I would say that based on Ms. Kothari's</p> <p>3 testimony, I would expect that the Keystone Pipeline would not</p> <p>4 be as susceptible to excavation risks as perhaps a significant</p> <p>5 number of other pipelines would be.</p> <p>6 COMMISSIONER HANSON: Have I asked any questions or</p> <p>7 made anything to you that would cause you that you need to</p> <p>8 respond right now from my earlier questions with other people</p> <p>9 that have testified?</p> <p>10 THE WITNESS: I'm sorry. I guess I don't understand</p> <p>11 your question.</p> <p>12 COMMISSIONER HANSON: I'm just giving you an</p> <p>13 opportunity to answer any questions or share with me any</p> <p>14 concerns that may have been brought up from questions that I</p> <p>15 asked other Interveners.</p> <p>16 Obviously you don't have.</p> <p>17 THE WITNESS: Yeah. Apparently not.</p> <p>18 COMMISSIONER HANSON: Okay. Thank you. Thank you,</p> <p>19 Mr. Smith. That's all the questions I have.</p> <p>20 MR. SMITH: Thanks. Other Commissioner questions?</p> <p>21 Anything else popped into your mind? I have just a couple of</p> <p>22 quick things, Mr. Miller, if I might.</p> <p>23 On that diagram on page 59 of the South Cass Lake</p> <p>24 situation, this is something you probably don't know about, but</p> <p>25 there seems to be something missing there. And I -- you</p>

<p style="text-align: right;">877</p> <p>1 probably don't know why. But what I see is a diagram of the</p> <p>2 dissolved plume and the oil that's created that. And I see two</p> <p>3 monitoring wells. And at least in my mind what's missing is</p> <p>4 there's no contaminant recovery well there.</p> <p>5 Did the information indicate at all why there's</p> <p>6 nothing like that there?</p> <p>7 THE WITNESS: I think if my memory serves me, at this</p> <p>8 point the thinking is that they can't recover it or they're not</p> <p>9 trying to recover it. Although, I don't understand the</p> <p>10 specifics of that or why. I think the thing is they're in a</p> <p>11 monitoring mode.</p> <p>12 MR. SMITH: Okay. Thank you on that. And I think you</p> <p>13 answered this with respect to Ms. Semmler's question that she</p> <p>14 asked you. But just out of -- just to make clear that the</p> <p>15 photos regarding the gas explosion up there, that's not in any</p> <p>16 way meant to imply that a similar consequence would be likely</p> <p>17 with respect to a crude oil pipeline.</p> <p>18 THE WITNESS: Yeah. It would be very clear to point</p> <p>19 that out that, you know, there's perhaps a very significant</p> <p>20 difference between a gas pipeline and a crude oil pipeline.</p> <p>21 And, for instance, those particular photos I guess in my</p> <p>22 expectation would not happen at all like that on a crude oil</p> <p>23 pipeline.</p> <p>24 MR. SMITH: Thank you. Just one last one. I noticed,</p> <p>25 you know, your evidence, I think, you know, with respect to</p>	<p style="text-align: right;">879</p> <p>1 A. I would believe that's the end of a pipe that would be used</p> <p>2 to connect another piece of pipe.</p> <p>3 Q. And do you know anything about how those two pieces of pipe</p> <p>4 were connected there?</p> <p>5 A. In that instance I do not.</p> <p>6 Q. Okay. Do you know what the vintage of the pipe is on this</p> <p>7 diagram?</p> <p>8 A. No, sir. I do not.</p> <p>9 Q. Do you know whether this pipe was subject to the fusion</p> <p>10 bond epoxy coating that we've heard about previous to today?</p> <p>11 A. I don't know, but I guess I would doubt it.</p> <p>12 Q. If we could just briefly go back to your Exhibit I from</p> <p>13 Miller 1, direct testimony.</p> <p>14 In looking at the three data sets to the left of the</p> <p>15 Keystone data set, which is on the far right, do you know</p> <p>16 whether and to what extent any of the pipelines that were</p> <p>17 reflected in the first three data sets, the California Fire</p> <p>18 Marshall, the Enbridge, and the U.S. industry average were</p> <p>19 subject to fusion bond epoxy coating?</p> <p>20 A. Excuse me. Did you say Exhibit I, or did you mean --</p> <p>21 Q. I'm sorry. Exhibit H.</p> <p>22 A. Okay. And now your question was in reference to the fusion</p> <p>23 bond epoxy?</p> <p>24 Q. Correct.</p> <p>25 A. And do I know if any of these or to what extent fusion bond</p>
<p style="text-align: right;">878</p> <p>1 SCADA systems and their performance and, you know, the</p> <p>2 example -- you showed the one example of a million-gallon leak</p> <p>3 still being -- having happened with a competently run SCADA</p> <p>4 system.</p> <p>5 And maybe this is a speech more than a -- but as I</p> <p>6 recall the testimony yesterday from I believe it was Mr. Thomas,</p> <p>7 I think my recollection is their worst case -- their planning,</p> <p>8 emergency planning evaluation, I think indicated roughly the</p> <p>9 same -- the same volume in terms of their planning threshold. I</p> <p>10 think they phrase it in terms of 21,000 and some odd barrels.</p> <p>11 And that equates to roughly a million gallons.</p> <p>12 So would you agree that they're probably pretty close</p> <p>13 to having acknowledged that even with a SCADA system that type</p> <p>14 of event is possible and is being planned for?</p> <p>15 THE WITNESS: Yes. I would agree with that.</p> <p>16 MR. SMITH: Okay. Thank you. Redirect -- or, I mean,</p> <p>17 recross from Mr. White?</p> <p>18 MR. WHITE: Just a few questions. Thank you.</p> <p>19 <u>RECROSS-EXAMINATION</u></p> <p>20 <u>BY MR. WHITE:</u></p> <p>21 Q. Mr. Miller, looking at page 59 which is still up on the</p> <p>22 screen, I noticed what looks to be the piece of pipe there has</p> <p>23 an arrow to a legend indicating leaking flange?</p> <p>24 A. That's correct.</p> <p>25 Q. Do you know what the flange is there?</p>	<p style="text-align: right;">880</p> <p>1 epoxy is involved in those?</p> <p>2 Q. Correct.</p> <p>3 A. I would say that I do not know that.</p> <p>4 Q. Okay. In looking at the three bars -- this is still on</p> <p>5 Exhibit H, the three bars on the far right-hand corner, the</p> <p>6 Keystone bars where there's a projected spill frequency rate of</p> <p>7 0.15, do you know whether that projected spill frequency rate</p> <p>8 was calculated on the basis of 1,845 miles or 1,372?</p> <p>9 A. I believe that was stated in the frequency volume analysis</p> <p>10 that was for the entire length of the pipeline, which was 1,845.</p> <p>11 Q. Okay. And briefly turning to Exhibit I, two data sets that</p> <p>12 are set forth on that exhibit, the Enbridge data set and the</p> <p>13 U.S. Industry Average data set, are they the same data sets that</p> <p>14 are also set forth on Exhibit H?</p> <p>15 A. Yes. The origin of that information is the same.</p> <p>16 Q. Okay. Turning to page 36 of your PowerPoint. And I</p> <p>17 believe you testified that you recognize that the Keystone</p> <p>18 Pipeline is a buried pipeline?</p> <p>19 A. Yes.</p> <p>20 Q. And would the fact that Keystone is a buried pipeline have</p> <p>21 any bearing on the likelihood of Keystone being pierced by a</p> <p>22 gunshot?</p> <p>23 A. I would think that it would be significantly lower, if not</p> <p>24 almost to a point where I think I would dismiss it. At least</p> <p>25 the pipeline itself. I would expect that, you know, there are</p>

<p style="text-align: right;">881</p> <p>1 people out there who would shoot at pump stations, for example.</p> <p>2 But as far as the pipeline itself, which as you mentioned is</p> <p>3 buried, I would -- I guess I can't imagine how somebody -- or</p> <p>4 how it would be pierced by a gunshot.</p> <p>5 Q. So this event that's represented on page 36 of your</p> <p>6 PowerPoint is unlikely to be replicated on the Keystone</p> <p>7 Pipeline, is it not?</p> <p>8 A. I would agree with that.</p> <p>9 Q. And were you here for the testimony of Ms. Kothari where</p> <p>10 she discussed the above ground piping at the pump stations?</p> <p>11 A. I've been here, but I don't know --</p> <p>12 Q. If you don't recall, that's fine.</p> <p>13 A. Okay. Yeah. I do believe that I was here.</p> <p>14 Q. So if I asked you whether you recall that testimony, what</p> <p>15 would your answer be?</p> <p>16 A. I guess at this point I'd probably have to say no.</p> <p>17 Q. We'll let it stand where it is.</p> <p>18 MR. WHITE: That's all the recross, Mr. Smith.</p> <p>19 MR. SMITH: Thank you. Any additional questions from</p> <p>20 Mr. Rasmussen?</p> <p>21 MR. RASMUSSEN: No, Mr. Smith.</p> <p>22 MR. SMITH: Mr. Hohn?</p> <p>23 MR. HOHN: I have a couple questions, Mr. Miller.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">883</p> <p>1 recognized as an industry leader?</p> <p>2 MR. WHITE: Objection.</p> <p>3 MR. SMITH: Sustained.</p> <p>4 MR. HOHN: That's all the questions. Thank you.</p> <p>5 MR. SMITH: Staff.</p> <p>6 MS. SEMMLER: None. Thank you.</p> <p>7 MR. SMITH: Any last Commissioner questions?</p> <p>8 Commissioner Kolbeck.</p> <p>9 COMMISSIONER KOLBECK: I'm quickly looking on this</p> <p>10 Cass Lake website. Do you know if they're still drinking out of</p> <p>11 that aquifer?</p> <p>12 THE WITNESS: I don't know. I'd have to refer to the</p> <p>13 site myself.</p> <p>14 COMMISSIONER KOLBECK: Thank you.</p> <p>15 MR. SMITH: You may step down. Thank you very much.</p> <p>16 Do you have any last -- any last what I'd call redirect since we</p> <p>17 don't have a lawyer for you?</p> <p>18 THE WITNESS: Not really, other than I'd like to say</p> <p>19 thank you to you gentlemen for tolerating me doing this, I</p> <p>20 guess. Going through this has given me an insight into the jobs</p> <p>21 that you have to do, and I appreciate the work that you do on</p> <p>22 behalf of the people of South Dakota.</p> <p>23 MR. SMITH: Thank you.</p> <p>24 CHAIRMAN JOHNSON: Mr. Smith, I just might add</p> <p>25 something. You know, it's interesting, normally the witnesses</p>
<p style="text-align: right;">882</p> <p>1 <u>RECROSS-EXAMINATION</u></p> <p>2 BY MR. HOHN:</p> <p>3 Q. Are you familiar with or did you hear the testimony earlier</p> <p>4 by TransCanada of witnesses regarding pig launchers where the</p> <p>5 pig would be launched and how the pig would be launched. If you</p> <p>6 remember.</p> <p>7 A. I guess I don't recall.</p> <p>8 Q. I'd like to go to your Exhibit I. I'm not sure what page</p> <p>9 that is. It's page 80 in the booklet.</p> <p>10 And refresh my memory again. This exhibit intends to show</p> <p>11 a comparison of what?</p> <p>12 A. This exhibit shows the amount of oil that is spilled per</p> <p>13 million barrel miles of product transport. In other words, it</p> <p>14 shows the number of gallons spilled based on a certain amount of</p> <p>15 transport that goes through a pipeline.</p> <p>16 Q. And on the left, the red bars show the experience of</p> <p>17 Enbridge from '96 to '05; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And on the far right shows the projected anticipation</p> <p>20 experience by TransCanada; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. My question, based on your analysis and your statistical</p> <p>23 experience, would you expect that a company that has no</p> <p>24 experience operating an oil pipeline might do better than a</p> <p>25 company like Enbridge which has years of experience and is</p>	<p style="text-align: right;">884</p> <p>1 you can tell what their ax to grind is or what their bias is.</p> <p>2 And we don't normally see that with staff-called witnesses</p> <p>3 because they're supposed to play it down the middle to the</p> <p>4 extent the facts dictate they should. But normally with the</p> <p>5 Interveners we don't see that.</p> <p>6 Mr. Miller, you were the most peculiar witness. If</p> <p>7 someone were to listen to the questions the different attorneys</p> <p>8 were asking you, if they didn't know any better, I'm not sure</p> <p>9 they would know where your personal views lied. You really</p> <p>10 appeared to search your mind not for what answer you wanted to</p> <p>11 give but what the facts indicated you should give.</p> <p>12 Thank you for doing that.</p> <p>13 MR. MILLER: Thank you. It was pointed out,</p> <p>14 Mr. Smith, there was one of my exhibits that need to be entered.</p> <p>15 I don't know where we stood on that.</p> <p>16 MR. SMITH: Thank you for reminding me. Is there an</p> <p>17 objection?</p> <p>18 MR. WHITE: No objection, Mr. Smith, except with</p> <p>19 regard to the photos of the gas pipeline explosion both on lack</p> <p>20 of foundation except for the one that had the TransCanada sign</p> <p>21 and also on relevance.</p> <p>22 MR. SMITH: I think I'm going to admit the document.</p> <p>23 We've clarified I think with the questions and also his</p> <p>24 clarification regarding what the document was intended to show.</p> <p>25 And with that caveat, I'm going to admit it.</p>

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1 (The witness is excused)

2 MR. SMITH: It's a quarter to noon. Is this a break

3 time before we start another witness? It's hard to see that

4 clock because it's got a glare on it. That would give us an

5 hour and 15 minutes until the crack of 1.

6 And would you rather -- would you rather take another

7 witness now or break and we'll just start with the individual

8 Interveners at 1?

9 CHAIRMAN JOHNSON: 1 o'clock would be fine with me,

10 Mr. Smith.

11 MR. SMITH: We're in recess until 1 o'clock. Thank

12 you all.

13 (A lunch recess is taken)

14 MR. SMITH: Thank you. The hearing in HP07-001, in

15 the matter of TransCanada Keystone Pipeline, LP for a permit to

16 construct a crude oil pipeline in South Dakota is reconvened

17 after our noon recess. It's 1 o'clock or maybe a minute after.

18 Right off the bat what I'd like to do is take a few

19 minutes and discuss the schedule of witnesses this afternoon.

20 I'll just let you know I've been informed by a few people that

21 they have time commitments that need to be -- that they need to

22 meet. These are individual Interveners who have to get out of

23 here and get home.

24 And my suggestion would be if it's okay with the

25 parties that we put off the initial State witnesses for a little

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1 bit. They live here. They're working across the street and

2 around the complex, and let the individuals who have driven a

3 long ways go first right here after noon. That is actually when

4 their scheduled times were. And then we turn to the subpoenaed

5 State employees after that.

6 Is that acceptable with you, Mr. Rasmussen? They're

7 your witnesses?

8 MR. RASMUSSEN: Yes. That's fine.

9 MR. SMITH: Okay. And do counsel for the State have

10 any issues with that?

11 MS. GIEDD: No. That's fine, Mr. Smith.

12 MR. SMITH: Okay. And the people who have expressed

13 to me the most urgency in terms of having to testify and move

14 along are the members of the Hofer family. And Mrs. Anderson

15 and your son -- I can't remember right off -- Scott Anderson.

16 Is that a fair statement?

17 MS. ANDERSON: He can't get a plane out of Aberdeen.

18 MR. SMITH: He can't get here.

19 MS. ANDERSON: He'll try tomorrow.

20 MR. SMITH: So for now we're really talking taking the

21 Hofers first and then, George, do you want to go thereafter?

22 And then who else do we have? We have George Piper, who was

23 gracious enough to let me move him back from his 9 o'clock

24 appointed time. And then we've got Ed Goss and Kent Moeckly.

25 Did I leave anybody out other than Scott Anderson whom

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1 we just heard about?

2 CHAIRMAN JOHNSON: Is your intention, Mr. Smith, to

3 take all individual Interveners, all of them prior to taking any

4 State witnesses?

5 MR. SMITH: Yeah. Unless there are -- it's up to you,

6 Mr. Chairman, if you want to. My assumption I guess is that the

7 individual Interveners won't be terribly lengthy in terms of the

8 amount of time. We conclude them and move on to the State

9 people.

10 If any of the individual Interveners are going to be

11 lengthy, then we might want to rethink that just out of courtesy

12 to the other witnesses who came here at an appointed time.

13 CHAIRMAN JOHNSON: My only thought was the Order

14 certainly doesn't matter for me, and if it is easier for

15 individuals, we certainly want to take them at a time that's

16 convenient for them. I'm glad you're doing it this way.

17 If you felt like any of the testimony was going to be

18 lengthy, I thought we might want to give some of the subpoenaed

19 witnesses an opportunity to get back to work for four or five

20 hours. You're making it sound like you don't necessarily expect

21 these witnesses to take very long.

22 MR. SMITH: I don't know. I never really know. But I

23 think my guesstimate would be -- you know, just based upon the

24 prefiled, it wasn't terribly lengthy.

25 CHAIRMAN JOHNSON: It's probably worth noting again.

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1 Again, every day we get new witnesses and Interveners that show

2 up. The purpose of them coming here today isn't to reiterate

3 their direct testimony, the prefiled testimony that's been

4 filed, but it's mostly to make any additions or corrections and

5 submit themselves for cross-examination.

6 Is that an appropriate description?

7 MR. SMITH: It is. Most of the people here this

8 morning has been brief. So a summary wouldn't be -- the

9 entirety wouldn't be a whole lot longer than what they filed.

10 With that, do we --

11 CHAIRMAN JOHNSON: We need to handle a few

12 administrative items on our end before we get ready to go. So I

13 think the schedule you laid out sounds perfectly fine by me.

14 COMMISSIONER KOLBECK: I agree.

15 CHAIRMAN JOHNSON: With that, we'll go off the

16 Internet for just a few moments.

17 MR. SMITH: Okay. Thanks.

18 (Discussion off the record)

19 MR. SMITH: Thank you. Mrs. Hofer, are you ready to

20 proceed then? Or however you guys want to do it. Just come on

21 up and take a seat. And I'll remind all of you that -- oh,

22 thank you. We took a short break here to discuss a couple of

23 things.

24 I want to just one thing, call attention to the mic.

25 Try to talk into the mic because it's the only way the people on

<p>889</p> <p>1 the internet and so on can hear. Also our reporter needs it to</p> <p>2 hear. Step one is you need to turn to the court reporter who</p> <p>3 will swear you in.</p> <p>4 (The witness is sworn by the court reporter)</p> <p>5 MR. SMITH: Then would you please introduce yourself</p> <p>6 and tell us where you're from, and then you can proceed to give</p> <p>7 us your testimony.</p> <p>8 MR. TIM HOFER: My name's Tim Hofer. My address is</p> <p>9 40918 192nd Street, Carpenter, South Dakota 57322.</p> <p>10 And I just wanted to make sure that my testimony got</p> <p>11 handed in. I don't see any reason to read it as you guys can,</p> <p>12 and if you've got something to ask me, you can. Otherwise, I'm</p> <p>13 ready to go home.</p> <p>14 MR. SMITH: Okay.</p> <p>15 MR. KOENECKE: I'm wondering if I couldn't go with</p> <p>16 him.</p> <p>17 MR. SMITH: What I'm understanding your -- right now</p> <p>18 then if you were to testify as to all of those matters here</p> <p>19 today, would your testimony be the same?</p> <p>20 THE WITNESS: Yeah. I don't know that I would change</p> <p>21 anything.</p> <p>22 MR. SMITH: Okay. Then would you like to offer your</p> <p>23 testimony right now into evidence, Tim?</p> <p>24 THE WITNESS: Please.</p> <p>25 MR. SMITH: We'll just call that Tim Hofer 1. Is</p>	<p>891</p> <p>1 attending a meeting in Clark hosted by the U.S. State</p> <p>2 Department. And you state that you felt the Government had</p> <p>3 already made up their mind.</p> <p>4 Why would you say that?</p> <p>5 A. Because that's just exactly what they said. That meeting</p> <p>6 to me was the biggest joke. I wish that the PUC would have had</p> <p>7 a representative there. Okay.</p> <p>8 Q. The other comment in that same paragraph, you refer to an</p> <p>9 environmental consultant who was hired by the State Department</p> <p>10 not being attentive at the meeting?</p> <p>11 A. Oh, yeah. That lady that had trouble staying awake. They</p> <p>12 just should have supplied a cot for her is all. Well, you know,</p> <p>13 it was disgusting because a bunch of us -- some of us talked,</p> <p>14 and we couldn't ask them any questions. If we had a question</p> <p>15 about something, they just said we couldn't do it. So I thought</p> <p>16 it was a waste of time because they didn't care about what we</p> <p>17 said anyway.</p> <p>18 Q. Okay. The bottom of that same page you make a reference to</p> <p>19 one of the things that concerned you was change of thickness.</p> <p>20 Would you care to elaborate on that?</p> <p>21 A. You know, my family is just as important to me -- it just</p> <p>22 seems like they're putting less importance on us in the country,</p> <p>23 you know. That's how we make our living. That's how I paid for</p> <p>24 this trip out here today.</p> <p>25 I think they should spend the money for a pipeline that's</p>
<p>890</p> <p>1 there any objection?</p> <p>2 MR. KOENECKE: No objection.</p> <p>3 MR. SMITH: Objection of any other parties?</p> <p>4 MR. RASMUSSEN: No objection.</p> <p>5 MR. HOHN: No objection.</p> <p>6 MS. SEMMLER: No objection.</p> <p>7 MR. SMITH: Tim Hofer 1 is admitted, and at this point</p> <p>8 I'm going to do what's called tendering you for</p> <p>9 cross-examination, which means questions by any other parties</p> <p>10 who may wish to ask you questions.</p> <p>11 Is that okay?</p> <p>12 THE WITNESS: Sure.</p> <p>13 MR. KOENECKE: Thank you for coming today, Mr. Hofer.</p> <p>14 I have no questions of you.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MR. SMITH: Mr. Rasmussen, do you have any questions</p> <p>17 of Mr. Hofer?</p> <p>18 MR. RASMUSSEN: I do not.</p> <p>19 MR. SMITH: Mr. Hohn.</p> <p>20 <u>CROSS-EXAMINATION</u></p> <p>21 <u>BY MR. HOHN:</u></p> <p>22 Q. I have a couple of questions, Mr. Hofer. Looking at your</p> <p>23 testimony, I'm not going to try to reiterate it, but I'd like</p> <p>24 clarification.</p> <p>25 On page 1 of your testimony, second paragraph, you refer to</p>	<p>892</p> <p>1 going to be there as good as forever in my lifetime, be there as</p> <p>2 long as I'm alive. I'd just as soon that they did it as good as</p> <p>3 they could the first time. Maybe it would prevent something.</p> <p>4 Q. The second page of your testimony, the third paragraph, you</p> <p>5 made a reference to TransCanada Keystone Pipeline is set to run</p> <p>6 kitty corner through your best piece of land.</p> <p>7 Could you define what kitty corner means?</p> <p>8 A. Rather than running straight through it so we only have to</p> <p>9 put up with it through a round, it's just going to go they call</p> <p>10 it diagonally basically. There's only one way we can get into</p> <p>11 that piece of land.</p> <p>12 You know, if they're working on it during when we're</p> <p>13 planting or harvesting or spraying, I have no idea how we would</p> <p>14 do it if we can't get across it. And when we spray -- say we're</p> <p>15 going to plant soybeans there next year. When we spray we drive</p> <p>16 in our road tracks. We don't run over the beans.</p> <p>17 So here we're going to have to run over a whole bunch of</p> <p>18 beans every time we turn around next to that trench or whatever</p> <p>19 you call it because we can't go all the way through the field.</p> <p>20 That's going to be at our cost. It's just a mess, you know.</p> <p>21 Q. Mr. Hofer, along that same line, that will be the case</p> <p>22 during the year of construction. There may possibly be some</p> <p>23 disruption during the second year. But after those first years,</p> <p>24 though, wouldn't that problem go away?</p> <p>25 A. Well, I wished I could say yes, but in my opinion, no.</p>



<p style="text-align: right;">893</p> <p>1 Because even if they pack their ground, we're still going to</p> <p>2 have a higher risk of getting stuck there.</p> <p>3 Q. Okay. Near the bottom of that page, the second to the last</p> <p>4 paragraph, you refer to the temperature of the oil -- or the</p> <p>5 temperature of the product in the pipe.</p> <p>6 When you plant winter wheat, which is an important cash</p> <p>7 crop for us, it will never be as good over the pipe. And you</p> <p>8 refer to the heat. How does the temperature of the product</p> <p>9 going through -- or how would the pipe, oil going through the</p> <p>10 pipe, affect a crop in your opinion?</p> <p>11 A. Well, it's going to affect all the crops, but winter wheat</p> <p>12 has to go dormant in the winter. And I don't know -- if it</p> <p>13 does, it wouldn't be for very long. And it's going to thaw out</p> <p>14 there first in the springtime. Whatever we plant there, corn,</p> <p>15 spring wheat, that's going to be the first place it's going to</p> <p>16 dry out.</p> <p>17 Q. Well, back to your comment about the grain itself, winter</p> <p>18 wheat is planted in the fall and harvested in the spring. Are</p> <p>19 you saying it's going to come up too quick? What are you saying</p> <p>20 there? Because of the temperature of the soil.</p> <p>21 A. I would imagine it will green up sooner than the rest of</p> <p>22 it, sooner than it should, which is going to, you know -- it's</p> <p>23 going to probably get froze off then I would imagine before it</p> <p>24 has a chance to dry out.</p> <p>25 Q. Okay. I understand then what you're saying there.</p>	<p style="text-align: right;">895</p> <p>1 things changed all the time. You did give us -- at least my</p> <p>2 family, myself, you gave us time to say what we wanted to say.</p> <p>3 Kind of like this right now. I'm not a fast thinker.</p> <p>4 I'm not used to this. So on the way home I'll think of</p> <p>5 something else I should have said that would have been better,</p> <p>6 but this is the best I can do for right now.</p> <p>7 CHAIRMAN JOHNSON: Well, you and I have something in</p> <p>8 common at least.</p> <p>9 THE WITNESS: You do pretty well up there.</p> <p>10 CHAIRMAN JOHNSON: Do you know of anybody that wanted</p> <p>11 to ask a question publicly at that Clark hearing but didn't get</p> <p>12 an opportunity to?</p> <p>13 THE WITNESS: No. I can't say that I do right now.</p> <p>14 CHAIRMAN JOHNSON: Okay.</p> <p>15 CHAIRMAN JOHNSON: I think that's all I've got right</p> <p>16 now, Mr. Smith.</p> <p>17 Thank you, Mr. Hofer.</p> <p>18 MR. SMITH: Other Commissioner questions?</p> <p>19 Commissioner Kolbeck.</p> <p>20 COMMISSIONER KOLBECK: Hi, Tim.</p> <p>21 THE WITNESS: Hey.</p> <p>22 COMMISSIONER KOLBECK: Your testimony points out a --</p> <p>23 a lot of things that you're concerned about, and I very much</p> <p>24 understand that. Have you been following along with the</p> <p>25 hearings on the internet or --</p>
<p style="text-align: right;">894</p> <p>1 MR. HOHN: Thank you.</p> <p>2 THE WITNESS: Sure.</p> <p>3 MR. SMITH: Staff, do you have questions of Mr. Hofer?</p> <p>4 MS. SEMMLER: None. Thank you.</p> <p>5 MR. SMITH: Commissioners, do you have any questions</p> <p>6 of Mr. Tim Hofer?</p> <p>7 CHAIRMAN JOHNSON: Yeah. Hi, Mr. Hofer.</p> <p>8 THE WITNESS: Hi.</p> <p>9 CHAIRMAN JOHNSON: I just want to make sure when</p> <p>10 Mr. Hohn directed you over to the second paragraph of your</p> <p>11 direct testimony and you noted how -- and this was at the U.S.</p> <p>12 State Department meeting about how the Government -- you were</p> <p>13 convinced that they had already made up their mind.</p> <p>14 You were talking about the Federal Government there;</p> <p>15 is that right?</p> <p>16 THE WITNESS: Yes. That's right.</p> <p>17 CHAIRMAN JOHNSON: In your third paragraph you note</p> <p>18 that at the PUC-held meeting in Clark there was very little time</p> <p>19 set aside for landowners and concerned citizens.</p> <p>20 Can you help me understand what you mean by that?</p> <p>21 THE WITNESS: I guess what I meant by saying</p> <p>22 TransCanada took up a lot of time in the beginning to tell us</p> <p>23 what they already told us at different times. We didn't really</p> <p>24 learn anything new from them or different.</p> <p>25 Or I didn't really say that right either because</p>	<p style="text-align: right;">896</p> <p>1 THE WITNESS: Right now?</p> <p>2 COMMISSIONER KOLBECK: Like in the past, Monday,</p> <p>3 Tuesday, or Wednesday?</p> <p>4 THE WITNESS: When I could, I have. You know, I</p> <p>5 listened a little bit yesterday and here and there, but you</p> <p>6 can't get it in the shop. You've got to be in the house so I</p> <p>7 didn't hear a whole lot of it. A little bit.</p> <p>8 COMMISSIONER KOLBECK: Some of the things, the thicker</p> <p>9 pipe and the fires, trenches, and stuff like that have been</p> <p>10 talked about. I was wondering if any of these hearings that</p> <p>11 you've heard have maybe eased some of your concerns?</p> <p>12 THE WITNESS: No. I did hear a little bit about all</p> <p>13 of those and caught Ben on the news too on his reports. So it</p> <p>14 all makes me real nervous. Because, you know, there's just not</p> <p>15 that much proof.</p> <p>16 COMMISSIONER KOLBECK: Sure. And just as kind of --</p> <p>17 we're not done yet. Obviously, we'll be going into tonight and</p> <p>18 tomorrow and next week. And all of this will be on a</p> <p>19 transcript.</p> <p>20 I guess my biggest concern is your concerns here and</p> <p>21 if any of that had been answered. So that's all I have.</p> <p>22 MR. SMITH: Commissioner Hanson, do you have a</p> <p>23 question?</p> <p>24 COMMISSIONER HANSON: Yes, I do. Thank you.</p> <p>25 Good afternoon, Tim.</p>

<p style="text-align: right;">897</p> <p>1 THE WITNESS: Hey.</p> <p>2 COMMISSIONER HANSON: How's it going?</p> <p>3 THE WITNESS: It will be going better in a few minutes</p> <p>4 here. About 9 o'clock tonight it will be going pretty good.</p> <p>5 COMMISSIONER HANSON: Well, we're enjoying your</p> <p>6 testimony. I don't want to sound defensive up here, but your</p> <p>7 testimony, your prefiled testimony was provocative. I'll put it</p> <p>8 that way.</p> <p>9 And Commissioner Johnson asked some questions that I</p> <p>10 think were pertinent from the standpoint -- from our standpoint.</p> <p>11 We want to make sure that we're doing our job properly as</p> <p>12 Public Utilities Commissioners. And we recognize that we have</p> <p>13 some very knowledgeable and capable landowners who are affected</p> <p>14 by this pipeline, and we want to make certain that we're doing</p> <p>15 what's right by them certainly.</p> <p>16 You made one statement at the beginning of your</p> <p>17 testimony or in response to a question, I believe it was, by</p> <p>18 Mr. Hohn when you stated that you had wished that a Public</p> <p>19 Utilities Commission representative had been at the meeting when</p> <p>20 the Federal Government was -- their agency was present.</p> <p>21 I believe there was some exchange of discussion. I</p> <p>22 don't know if that was on the record or not, but Kara Semmler in</p> <p>23 case you missed it, an attorney who is employed through the PUC,</p> <p>24 but in this docketed hearing she does, in fact, represent the</p> <p>25 better interests of the citizens of South Dakota. And the way</p>	<p style="text-align: right;">899</p> <p>1 THE WITNESS: I was talking about the big guys.</p> <p>2 COMMISSIONER HANSON: Okay. Are we the medium-sized?</p> <p>3 THE WITNESS: I meant the two senators,</p> <p>4 representative.</p> <p>5 COMMISSIONER HANSON: All right. You're talking about</p> <p>6 federally elected officials.</p> <p>7 THE WITNESS: Yeah.</p> <p>8 COMMISSIONER HANSON: All right. Well, then I'm going</p> <p>9 to assume that the rest of your paragraph there would all be</p> <p>10 associated with the --</p> <p>11 THE WITNESS: Which paragraph are we on now?</p> <p>12 COMMISSIONER HANSON: The same paragraph, second page,</p> <p>13 second paragraph. Right after that you had made a few other</p> <p>14 comments about -- so does all of that pertain then to the</p> <p>15 Federal Government that you're referring to?</p> <p>16 THE WITNESS: No. Some of it pertains to you guys</p> <p>17 too.</p> <p>18 COMMISSIONER HANSON: Which portion just so I know --</p> <p>19 where are we failing?</p> <p>20 THE WITNESS: I'm not saying that you're failing, but</p> <p>21 I'll find out. I'll just say I'll find out how important we</p> <p>22 really are. You know, if we're really important, you guys are</p> <p>23 going to put stipulations -- if this thing has to go through,</p> <p>24 you're going to help us out with the easements so it's more fair</p> <p>25 and protect us. And I can't think of anything else, but I know</p>
<p style="text-align: right;">898</p> <p>1 it -- and she was present at that meeting, I believe; is that</p> <p>2 correct?</p> <p>3 MS. SEMMLER: (Nods head).</p> <p>4 COMMISSIONER HANSON: And she's nodding correct. The</p> <p>5 way -- just so that you understand, the way that we are -- and</p> <p>6 this is just a -- not in any way to give a great deal of</p> <p>7 explanation, but there's a lot of folks out there who don't</p> <p>8 quite understand the way the Public Utilities Commission</p> <p>9 functions from that point. We are represented up here</p> <p>10 individually, but we work with a Hearing Officer.</p> <p>11 Ms. Semmler and Karen Cremer are attorneys who we</p> <p>12 don't really associate with and discuss the items of this with.</p> <p>13 And I don't mean to be testifying, but I want you and the other</p> <p>14 folks to understand that. They are representing basically the</p> <p>15 citizens in this.</p> <p>16 So we've got different groups here representing</p> <p>17 different entities, even though we're seated around the same</p> <p>18 table.</p> <p>19 You had made a statement in your prefiled testimony --</p> <p>20 it was on the second page, second paragraph, and you stated that</p> <p>21 the land that we thought we owned until this private oil company</p> <p>22 from a foreign company came along and said it was theirs to use</p> <p>23 however they wanted and no elected official in South Dakota</p> <p>24 lifted a finger to help us, what did you mean by the no elected</p> <p>25 official in South Dakota lifted a finger --</p>	<p style="text-align: right;">900</p> <p>1 there's a lot of them I'll think of in a little bit.</p> <p>2 COMMISSIONER HANSON: All right. It just appeared</p> <p>3 that we had not accomplished something we were supposed to</p> <p>4 accomplish up to this juncture.</p> <p>5 THE WITNESS: When I went to the first meeting in</p> <p>6 Clark I heard of you. I know a lot of stories about him because</p> <p>7 we've got some mutual friends.</p> <p>8 COMMISSIONER KOLBECK: We'll keep that between us.</p> <p>9 THE WITNESS: For a while anyway.</p> <p>10 CHAIRMAN JOHNSON: Object on relevance.</p> <p>11 COMMISSIONER HANSON: All right. Well, Mr. Hofer, I</p> <p>12 appreciate the information and the discussion and the fact that</p> <p>13 you did take the time to come here.</p> <p>14 THE WITNESS: You guys too. I didn't know what to</p> <p>15 expect when I went to the first meeting, but you guys asked a</p> <p>16 lot of questions and you are asking a lot of questions and I get</p> <p>17 the feeling that you care and I hope that's true. I think it</p> <p>18 is.</p> <p>19 COMMISSIONER HANSON: Thank you, Mr. Hofer.</p> <p>20 THE WITNESS: So I'm depending on you guys to take</p> <p>21 care of me.</p> <p>22 COMMISSIONER HANSON: All right. That's all I have,</p> <p>23 Mr. Smith.</p> <p>24 MR. SMITH: I think then you're excused then,</p> <p>25 Mr. Hofer.</p>

<p style="text-align: right;">901</p> <p>1 THE WITNESS: I'll accept that. Thank you.  2 (The witness is excused)  3 MR. SMITH: Thank you. We appreciate you coming.  4 Now is it going to be Delwin or Pam Hofer next?  5 Thank you, sir.  6 (The witness is sworn by the court reporter)  7 MR. SMITH: If you would, please, state your name and  8 give us where you live and then --  9 MR. DELWIN HOFER: I'm Delwin Hofer. I live at  10 40916 192nd Street, Carpenter, South Dakota.  11 MR. SMITH: Thank you. And you did submit prefiled  12 testimony in this; right?  13 THE WITNESS: Yes, I did.  14 MR. SMITH: Is that what you have in front of you  15 there?  16 THE WITNESS: Yes, I do.  17 MR. SMITH: If you were to testify live today, would  18 your testimony be the same as what's in there?  19 THE WITNESS: I guess I'd like to comment on a few  20 things, if I could.  21 MR. SMITH: Oh, you may. I'm just asking you are  22 there any changes in the testimony that you'd want to make  23 because what I want to do is then have you offer it into  24 evidence.  25 THE WITNESS: No. I guess probably not.</p>	<p style="text-align: right;">903</p> <p>1 it back to TransCanada and told them that I could not sign this  2 easement.  3 And I asked them then if they get all of their permits  4 if they would meet me in my lawyer's office and draw up a new  5 easement agreement, and they agreed that they would.  6 But since then I had two calls from one of their land  7 agents to sign the easement again. And I thought I had this all  8 taken care of where I wouldn't have to talk to a land agent  9 again until we meet in my lawyer's office.  10 But about three weeks later I got another easement  11 agreement in the mail. And that easement agreement kind of  12 upset me a little. At the place where I was to sign the  13 easement it has written -- and I have a copy of it right here  14 that I'd like to give you. It says, Delwin Hofer, husband,  15 Pam R. Hofer, husband.  16 If TransCanada makes a simple mistake like this, can  17 they really take care of a pipeline, an oil high pressure  18 pipeline?  19 I would think they should have been able to catch  20 this.  21 The route of this proposed line runs through my land  22 at an angle. Could make it impossible to farm. This quarter I  23 own is a good productive piece of land. There is only one way  24 to farm it, to get to it.  25 Will I be able to -- during the construction time will</p>
<p style="text-align: right;">902</p> <p>1 MR. SMITH: Okay. At this point in time would you  2 like to offer your prefiled testimony into evidence?  3 THE WITNESS: Yes.  4 MR. SMITH: At this time he's offered it. It will be  5 Delwin Hofer Exhibit 1.  6 Is there an objection to his prefiled testimony?  7 MR. KOENECKE: No objection.  8 MR. RASMUSSEN: No objection.  9 MR. HOHN: No objection.  10 MS. SEMMLER: No objection.  11 MR. SMITH: Okay. Your prefiled testimony is  12 admitted. Now please proceed, and you can tell the  13 Commissioners what you want them to hear.  14 THE WITNESS: I would just like to have you go through  15 some of it. About the middle of May a TransCanada agent, land  16 agent, called me on the phone and told me that he wanted to meet  17 with me and have me sign a permit, easement permit to go across  18 my land. He told me that my neighbors had all signed it and  19 that I should -- I could just as well have the money.  20 And I asked him if TransCanada had all the permits to  21 build it, and he said they did. I knew that they didn't. I  22 talked to him just a little bit longer on the phone, and I hung  23 up.  24 A few days later I got the easement in the mail which  25 I took to Clark and give to the -- at the PUC hearing I handed</p>	<p style="text-align: right;">904</p> <p>1 I be able to get to the west side of my field? And I have  2 another question. I plan on planting this field to beans. And  3 beans sometimes get bugs. Will TransCanada shut down their --  4 if they say they are going through the land and digging and --  5 will they shut down for three, four days to give me time to  6 spray my beans?  7 The chemical used to kill bugs, I think you could have  8 a two or a three-day waiting period on it. And if they don't,  9 why, I'd have to stay back a long ways, and I would lose quite a  10 bit of production on my beans because of it.  11 And then at a hearing in Clark Buster Gray said that  12 the pipe would be bent hydraulically to fit the land. I'm a  13 farmer. I work with iron. A little bit anyway. And whenever I  14 have stretched a piece of pipe -- or wherever I bent a piece of  15 pipe it has to stretch. Will this bending this pipe  16 hydraulically to fit the land, will that stretch the pipe and  17 ruin the pipe -- or weaken the pipe? I believe that it will.  18 Another thing I'd like to add: I'm wondering if a  19 rodent or badger could -- could a badger or rodent dig down and  20 ruin the outside of the pipe, take the protective coating off  21 the pipe? Is it possible? I guess I really don't know.  22 And the soil in our area is -- the bottom of it is  23 very heavy and stays wet, very corrosive. And beings that my  24 land is a very short distance from pumping station 21, I feel  25 that it has a greater -- there is a greater possibility of leaks</p>

<p style="text-align: right;">905</p> <p>1 and contamination of the soil.</p> <p>2 My land drains toward a creek that serves as a water</p> <p>3 supply for our cattle. This creek flows to Chute Creek and on</p> <p>4 to the James River. A leak at the location on my land could</p> <p>5 contaminate the water supply for our cattle and pollute the</p> <p>6 creek and the river.</p> <p>7 I'm a conservationist. I've been on the conservation</p> <p>8 board in Beadle County for several years. I've encouraged no</p> <p>9 till farming to save our soils. I can't -- as a farmer I cannot</p> <p>10 destroy or drain wetland or take trees out of wetlands. Yet the</p> <p>11 TransCanada plan for the pipeline seems to go against these</p> <p>12 conservation practices and rules that we have worked with for</p> <p>13 many years.</p> <p>14 According to TransCanada, the information that I have,</p> <p>15 TransCanada can go through wetlands, through aquifers, take</p> <p>16 trees out of wetlands, destroy native grasslands. Don't trees,</p> <p>17 aquifers, and wetlands have any value at all?</p> <p>18 And then on the map filed with TransCanada Application</p> <p>19 to the PUC entitled Land Use Type, Map 20-46, our land is marked</p> <p>20 as pasture land. And it's not.</p> <p>21 Does that mean that TransCanada will go through and</p> <p>22 plant a strip of grass where they tear up my land?</p> <p>23 I guess I've attended about seven meetings. This is</p> <p>24 the eighth meeting that I've attended with TransCanada. And I'm</p> <p>25 getting real tired of it. The pressure on me has been real</p>	<p style="text-align: right;">907</p> <p>1 son then, we're going to tender you for questions,</p> <p>2 cross-examination from the other parties here.</p> <p>3 Is that okay?</p> <p>4 THE WITNESS: I guess so. I'll do the best I can. I</p> <p>5 might need a little help from the PUC, but I'll try and do the</p> <p>6 best I can.</p> <p>7 MR. SMITH: That's all you can do in this life. Fire</p> <p>8 away, Mr. Koenecke.</p> <p>9 MR. KOENECKE: Mr. Hofer, thank you for coming today.</p> <p>10 You'll need no help on my account. I have no questions for you.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 MR. RASMUSSEN: I have none.</p> <p>13 MR. SMITH: Mr. Hohn.</p> <p>14 MR. HOHN: Mr. Hofer, I have a couple questions for</p> <p>15 you.</p> <p>16 <u>CROSS-EXAMINATION</u></p> <p>17 <u>BY MR. HOHN:</u></p> <p>18 Q. How long have you farmed at this site near Carpenter?</p> <p>19 A. I bought the land in 1971.</p> <p>20 Q. And during -- and you farmed ever since; is that correct?</p> <p>21 A. I started farming -- actually I've been farming since about</p> <p>22 1962.</p> <p>23 Q. Okay. During the time you've owned this property or other</p> <p>24 property you've owned since 1971 have you been asked to provide</p> <p>25 easements to utilities like rural water systems and rural</p>
<p style="text-align: right;">906</p> <p>1 rough. I've had heart problems in the past and bypass, and I</p> <p>2 guess I think that TransCanada is no -- has no respect at all</p> <p>3 for property owners, people, land, water, and wildlife.</p> <p>4 My land is right now, I feel, in your hands of the</p> <p>5 Public Utilities Commission. I ask you to deny TransCanada from</p> <p>6 pushing this project on us. Take care of us.</p> <p>7 I guess that's about all I got to say.</p> <p>8 I would like to submit these too. This is a map here</p> <p>9 on -- that I referred to. 20-46, that shows that my land here</p> <p>10 is classified as pasture land. It's been farm ground for a lot</p> <p>11 of years. I guess that's probably all I have. I can't think of</p> <p>12 anything else.</p> <p>13 MR. SMITH: Thank you, Mr. Hofer. Maybe -- I don't</p> <p>14 know if you have copies of those, but what I'm going to have you</p> <p>15 probably do is hand them over to the court reporter so she can</p> <p>16 mark them as exhibits.</p> <p>17 MR. SMITH: Okay. At this time would you want to</p> <p>18 offer those two exhibits into evidence?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MR. SMITH: Is there an objection?</p> <p>21 MR. KOENECKE: No objection.</p> <p>22 MR. RASMUSSEN: No objection.</p> <p>23 MR. HOHN: No objection.</p> <p>24 MR. SMITH: Okay. Your Delwin Hofer Exhibits 2 and 3</p> <p>25 are received into evidence. At this time then just as with your</p>	<p style="text-align: right;">908</p> <p>1 electric?</p> <p>2 A. Yes. I did. I believe rural water wanted -- did have an</p> <p>3 easement on this -- on this Section 9 in Barrett Township where</p> <p>4 the proposed pipeline is going through.</p> <p>5 Q. And did you grant an easement?</p> <p>6 A. Yes, I did. I might comment, since that time rural water</p> <p>7 didn't need it, and I asked them to take the easement off so the</p> <p>8 easement will be off of that Section 9.</p> <p>9 Q. Okay. Mr. Hofer, what is your source of drinking water at</p> <p>10 your farm or livestock water at your property?</p> <p>11 A. At the farm we use an artesian well. And some of it -- one</p> <p>12 of our pastures we use rural water. We have the rural water</p> <p>13 hookup there at our farm, but we're not using it. It so</p> <p>14 happened that the year before we got rural water we had to spend</p> <p>15 \$15,000 for a new well, and as long as that well works, we're</p> <p>16 going to use it. We've got good water there and a lot of it.</p> <p>17 Q. I understand it. And just for the record, your rural water</p> <p>18 provider is who?</p> <p>19 A. Mid-Dakota.</p> <p>20 Q. Mid-Dakota. In your testimony was reference to -- the</p> <p>21 second page of your testimony you asked a question regarding a</p> <p>22 badger digging down and damaging the coating on the pipe.</p> <p>23 Can you elaborate on that? How would an animal do that, in</p> <p>24 your opinion?</p> <p>25 A. Well, I don't know. It seems like there's kind of a hill</p>

<p style="text-align: right;">909</p> <p>1 just a little further east of where this proposed pipeline's</p> <p>2 going through on this piece of land. And it seems like we can</p> <p>3 cover up them badger holes and it don't take very long and</p> <p>4 they're right back there again.</p> <p>5 I was wondering. You know, I got to thinking about it.</p> <p>6 Badgers do a tremendous amount of damage digging all over. I</p> <p>7 don't know why they wouldn't like to lay right beside that hot</p> <p>8 line and do some digging.</p> <p>9 Q. Okay. One of the -- the burden of proof for the Applicant</p> <p>10 in this case is under South Dakota Law 49-41B-22. And there are</p> <p>11 four questions essentially the statute asks. The first deals</p> <p>12 with whether they comply with the laws. And I'm not going to</p> <p>13 ask you that because that would be a legal question for an</p> <p>14 attorney.</p> <p>15 But the other three items I would like to ask you. In your</p> <p>16 opinion based on what you know about this oil pipeline, does it</p> <p>17 pose a threat of serious injury to the environment or to the</p> <p>18 social and economic condition of the inhabitants?</p> <p>19 A. I would say that it definitely does. You know, with the</p> <p>20 leak they had in Minnesota just lately makes me wonder will I</p> <p>21 really feel safe driving a tractor or a combine over this line?</p> <p>22 And if this line would run at a straight line through my land, I</p> <p>23 probably wouldn't ever even think about farming that, farming</p> <p>24 over that land. I would just leave it. Because I think the</p> <p>25 risk is too great. It looks like it don't take much to get it</p>	<p style="text-align: right;">911</p> <p>1 Mr. Hofer?</p> <p>2 COMMISSIONER KOLBECK: I just -- I'll ask you the same</p> <p>3 thing I asked Tim, Delwin. Have you listened? Has anything</p> <p>4 that's come out yet this week put anything on your mind at ease?</p> <p>5 THE WITNESS: You know, I didn't really listen. I</p> <p>6 just got a little information that Tim give me. And I would say</p> <p>7 no. I think maybe if I'd go over it, maybe I'd learn a few</p> <p>8 things that I didn't know. I guess I've learned something at</p> <p>9 about every meeting that I went to. A lot of it I didn't want</p> <p>10 to learn.</p> <p>11 COMMISSIONER KOLBECK: Well, it's just one thing that</p> <p>12 kind of sticks out in my mind is the pipe can withstand 51 tons</p> <p>13 of pressure. That would be an awful big badger. That might put</p> <p>14 your mind at ease knowing how much pressure it can withstand?</p> <p>15 Maybe.</p> <p>16 THE WITNESS: I guess you maybe misunderstood it. I</p> <p>17 didn't mean the badger would dig a hole in that line. I mean</p> <p>18 the badger could take the protective coating off, and it would</p> <p>19 corrode that line in a hurry is what I meant. No badger's going</p> <p>20 to dig through that line. If it does, it's going to leak long</p> <p>21 before.</p> <p>22 COMMISSIONER KOLBECK: Some of the stuff that come out</p> <p>23 I was just wondering if it helped at all. That's all. Thanks.</p> <p>24 MR. SMITH: I think you're excused then, Mr. Hofer.</p> <p>25 THE WITNESS: Okay. Thank you.</p>
<p style="text-align: right;">910</p> <p>1 started once there's a leak. And, I don't know, you know, I</p> <p>2 would -- I think it would definitely devalue my property</p> <p>3 there.</p> <p>4 Q. And item 3 the burden of proof is, Do you believe the</p> <p>5 pipeline would substantially impair the health, safety, and</p> <p>6 welfare of the inhabitants, health, safety, and welfare?</p> <p>7 A. Oh, I would say so. The health part of it. If it leaks,</p> <p>8 starts a fire, why, it's going to endanger people. And I'm not</p> <p>9 very far. My land is not very far away from that pumping</p> <p>10 station. And I understand that pumping station is going to be</p> <p>11 pretty loud.</p> <p>12 And I hear some talk about burying two lines. Will that</p> <p>13 increase the noise from the pumping station double what they say</p> <p>14 it is going to be now? I don't know.</p> <p>15 Q. The last question I have for you is the fourth item under</p> <p>16 the burden of proof. In your opinion would it interfere with</p> <p>17 the orderly development of the region or your personal property?</p> <p>18 A. I would say it would because you're going to have to be</p> <p>19 real careful where you put a fence post in on top of it. As far</p> <p>20 as being able to irrigate this land, I would say that it would</p> <p>21 probably not work at all.</p> <p>22 MR. HOHN: Thank you.</p> <p>23 MR. SMITH: Staff? Questions.</p> <p>24 MS. SEMMLER: None. Thank you.</p> <p>25 MR. SMITH: Commissioners, do you have questions of</p>	<p style="text-align: right;">912</p> <p>1 (The witness is excused)</p> <p>2 MR. SMITH: Thank you, sir. Mrs. Hofer.</p> <p>3 (The witness is sworn by the court reporter)</p> <p>4 MS. HOFER: My name is Pam Hofer. 40916 192nd Street,</p> <p>5 Carpenter, South Dakota.</p> <p>6 Okay. I just have a couple of things I just want to</p> <p>7 kind of say about the testimony that you have. And then I have</p> <p>8 a few things to give you to add to it that I brought today. My</p> <p>9 big concern is the safety as they said with having the thicker</p> <p>10 pipe. Because I feel we're just as important in the rural areas</p> <p>11 as the city people are. And we work hard to make food for the</p> <p>12 nation, the world. We like it. We want to continue doing it.</p> <p>13 And we hope that you can help us do that.</p> <p>14 I'd like to see the 100-year perpetual agreement too</p> <p>15 if we have to go through with this.</p> <p>16 One of my big concerns is with these people that are</p> <p>17 going to be working on this 1,077 miles or watching it of line,</p> <p>18 I don't feel that's enough. In here you'll see where I've</p> <p>19 broken it down to how many people -- I'm not going to read it.</p> <p>20 How many people that would put between different miles.</p> <p>21 I feel that with our pumping stations we should have</p> <p>22 someone stationed year round all the time so that if there is a</p> <p>23 problem, it can be shut down. I know they say it will be shut</p> <p>24 down by computers and things. Computers fail. We know that.</p> <p>25 And I just don't want to see a failure like that happen. It</p>

<p style="text-align: right;">913</p> <p>1 would be what, four, five hours to get up from Omaha, six to get  2 to it. That's too long.</p> <p>3 Another thing I'm wondering with these pumping  4 stations, is there going to be somebody there like if there's a  5 leak or something where are they going to get snow removal  6 people to help with that? I was wondering about that.</p> <p>7 That's pretty much with my testimony.</p> <p>8 Now I have some things that I would like to add to my  9 testimony today. PS 21, the Carpenter area is stated in the --  10 oh, let's see. That's in here too, isn't it? Oh, no. It's  11 right here. Where is my sheet about this? Okay. Here.</p> <p>12 Okay. Table 3, 12, 2-1, page 3, 12 through 16  13 TransCanada states there are six structures within one mile of  14 the Carpenter pumping station. There is in the Environmental  15 Impact Statement. I took it out of there.</p> <p>16 I don't know where they got these numbers from because  17 if somebody came to count them, they can't count. I have gone  18 down to tell you here how many structures there are within a  19 mile of PS 21. And where we did -- from where we saw the people  20 scouting and measuring that's where we started measuring.</p> <p>21 So I have the place where it starts. And here is  22 across the road a ways there's a garage which is a structure.  23 Madsen's cattle corrals where they sort their cattle and stuff  24 is a structure. The ball field. There's a well house, an  25 outhouse, and our lunch stand where we serve lunch when we have</p>	<p style="text-align: right;">915</p> <p>1 behind. There's the Maxine Iverson house. There's Harold Laabs  2 and Selma's home. There's a machine shop in their garage. He  3 used to have a business here in town. There's another house and  4 a garage there. There's a car there. There's somebody living  5 there. There's our church.</p> <p>6 And if you go -- which I think these are in, but  7 Ronnie Opsahl, he's north of town just a little ways, two  8 buildings. And then there's our grandparents' farm, which  9 there's about 22 to 24 buildings. And I know some of them are  10 going to be in it. I'm not sure. I think they'll all hit, but  11 I'm not sure on that. And then some more pictures of our  12 grandparents' farm.</p> <p>13 So I have this broke down too. There's 11 houses.  14 There's four businesses. One church. There's nine people that  15 live there full time that I know. Plus those others. I'm not  16 sure how many are there now. There's 12 people that work at the  17 business in town. There's one pastor, and there's three lay  18 pastors that help him out. And then the ball field and the  19 garage.</p> <p>20 And I -- the measure is around 3,300 feet from the  21 proposed site to the first edge of Carpenter where it would  22 start and then kitty corner across town would be probably what,  23 a block kitty corner, a little further. So I didn't measure it  24 way to the end, but we got it that far.</p> <p>25 And they have only recognized six structures in that</p>
<p style="text-align: right;">914</p> <p>1 our tournaments. There's Wheat Growers in town. There's Wheat  2 Growers buildings. I took pictures of every building in town.  3 There's some more Wheat Growers buildings, their tanks,  4 fertilizer tanks, storage tanks, seed buildings.</p> <p>5 There's a Carpenter Country Store, which is a gas  6 station and a garage. There's their supply shed. There's the  7 post office. There's the old cafe and the old post office.  8 There are still structures there. There's the new cafe and  9 community center.</p> <p>10 And then I went into the houses. There's the Aaron  11 Wicks home. There's the Decker house. There's the mobile home.  12 There's a Dick Brede house and garage. And then here's the  13 pictures from the back with all the little houses they have in  14 the back for storing tools and things. There's Mary Opsahl's  15 home. And I didn't get the building in back of that. She has a  16 little storage shed.</p> <p>17 There's Pearl Wicks' house or garage. There's ma and  18 pa's house. There's Goldie Wicks' house and garage. And this  19 house, there's a big family and whenever they come home they get  20 to stay there. And there is somebody renting it now, and I  21 don't know how many people are there or -- I didn't check that,  22 how long they're there.</p> <p>23 There's the Tubby Opsahl house. I guess I don't know  24 what this one's called, but then there's a house with two  25 buildings out behind. There's the Christensen home and the shed</p>	<p style="text-align: right;">916</p> <p>1 Environmental Impact Statement. So I wanted to get that  2 corrected. So I do want to enter this today for you to keep,  3 this book with all of my pictures in it.</p> <p>4 Okay. My husband covered that.</p> <p>5 I am worried about the depth of the pipe too. In this  6 right here, in our first easement that we got it says at the  7 bottom here, Except where the above-ground piping facility such  8 as main line black valves, pumping stations, and except as  9 otherwise stated in the agreement, each pipeline shall be  10 installed at a depth conforming with industry standards and the  11 requirements of applicable laws.</p> <p>12 Well, I'm not good -- I'm not a lawyer. I don't know  13 much about some of this stuff, but I'm worried because in some  14 of the things that we got from TransCanada they said and at some  15 of their meetings they said they only have to be 2 feet deep but  16 they're going to go 4 foot deep.</p> <p>17 So I want to know how are we going to be sure that  18 they are going to be 4 foot deep? Is there somebody going to be  19 there watching them, or do we just have to believe it's going to  20 be? There's one place I saw 3 and a half feet. Well, 6 inches  21 to me in a pipe like that is a big difference. I would like to  22 see the pipe even deeper so we can feel safer when we're around  23 there working. That's that one.</p> <p>24 My husband took care of me being a husband. Having  25 that kind of marriage, which I was very, very, very upset with.</p>

<p style="text-align: right;">917</p> <p>1 One thing my husband didn't cover, and I will. This</p> <p>2 is the angling through our field. We can't get across to farm</p> <p>3 it. If they put this in -- I heard this man in North Dakota</p> <p>4 talking. He said it's been nine years since a pipeline was put</p> <p>5 in his field. And he cannot cross it with his equipment today</p> <p>6 yet because like this last year we had 10 inches of rain in four</p> <p>7 days. Three weeks later we had 6 more inches.</p> <p>8 That would totally have saturated that place. Well,</p> <p>9 we would never get across. If we can't farm this west half of</p> <p>10 our section, which is bigger than what they're leaving us to the</p> <p>11 east, are they going to pay me for the crop? If this made like</p> <p>12 we did this year, 135 bushel corn, and I can't plant this over</p> <p>13 here, can I get a payment of 135 bushels an acre out of them for</p> <p>14 that?</p> <p>15 I can't get there. There's no other road from the</p> <p>16 west that we can get in there. That's the only way in. So if</p> <p>17 we have to if they could burrow under or something if we have to</p> <p>18 go through with it but with our equipment we will never get</p> <p>19 across there to farm it. And if we get stuck and have to rip</p> <p>20 something up, that is going to be very, very costly.</p> <p>21 Otherwise, I think that's going to -- so I just want</p> <p>22 to kind of close with this. Please look into your hearts and</p> <p>23 study all the laws and the information and see if you could</p> <p>24 please place conditions on any permit you decide to grant to</p> <p>25 TransCanada that would at least provide more protection for</p>	<p style="text-align: right;">919</p> <p>1 structures within 1 mile of the pumping station will be Pam</p> <p>2 Hofer Exhibit 2.</p> <p>3 MR. SMITH: Those are the two exhibits you want to</p> <p>4 enter; is that correct?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. SMITH: At this time would you want to offer those</p> <p>7 into evidence?</p> <p>8 THE WITNESS: Yes, I do.</p> <p>9 MR. SMITH: Is there any objection from TransCanada?</p> <p>10 MR. KOENECKE: Mr. Smith, I'm anxious to look at the</p> <p>11 photo album. I must say, Mrs. Hofer, that may be the most</p> <p>12 complete foundation for an exhibit I've encountered in my 12</p> <p>13 years as a lawyer. It was nicely done.</p> <p>14 MR. RASMUSSEN: No objection.</p> <p>15 MR. HOHN: No objection.</p> <p>16 MS. SEMMLER: No objection.</p> <p>17 MR. SMITH: Okay. Pam Hofer Exhibits 1 and 2 are</p> <p>18 received into evidence. At this point in time then I'm going to</p> <p>19 tender you for questions from the other parties.</p> <p>20 Mr. Koenecke.</p> <p>21 MR. KOENECKE: I do have a couple.</p> <p>22 <u>CROSS-EXAMINATION</u></p> <p>23 <u>BY MR. KOENECKE :</u></p> <p>24 Q. Mrs. Hofer, have you reviewed any amendments to the</p> <p>25 Keystone Application on file with the South Dakota Public</p>
<p style="text-align: right;">918</p> <p>1 public safety, ground water, the farmer, the landowner, and the</p> <p>2 environment.</p> <p>3 We have a great place to live here in South Dakota,</p> <p>4 and we should be eager for -- we shouldn't be eager for just a</p> <p>5 few tax dollars to put up with a crude oil pipeline like this.</p> <p>6 Let's keep South Dakota, our place to live, as good as we have</p> <p>7 it now.</p> <p>8 So I think that's kind of what I wanted to say. And I</p> <p>9 really hope that the project does get denied. That is what I</p> <p>10 have to say today.</p> <p>11 MR. SMITH: Thank you, Mrs. Hofer. At this time I'll</p> <p>12 ask you the questions I asked your son and your husband. In</p> <p>13 terms of your prefiled testimony, here under oath today do you</p> <p>14 certify that everything in there is true under oath and that if</p> <p>15 you testified as to those exact things today, your testimony</p> <p>16 would be essentially the same?</p> <p>17 THE WITNESS: It would.</p> <p>18 MR. SMITH: So why don't we mark her prefiled as</p> <p>19 Pam Hofer 1. And then you wanted to introduce as well the book</p> <p>20 full of photos.</p> <p>21 Now I want to ask you, are those photos that are</p> <p>22 duplicates that we can keep?</p> <p>23 THE WITNESS: You keep these. This is for you. No.</p> <p>24 They're for you.</p> <p>25 MR. SMITH: Okay. And so the book of photos of</p>	<p style="text-align: right;">920</p> <p>1 Utilities Commission?</p> <p>2 A. Is that in here, or I don't know what you mean.</p> <p>3 Q. I presume -- have you reviewed the Application as it was</p> <p>4 filed in April with the South Dakota PUC?</p> <p>5 A. I'm sure I did. I read so much stuff I don't know what you</p> <p>6 mean.</p> <p>7 Q. I can empathize with that. I guess do you know whether</p> <p>8 you've reviewed amendments since August?</p> <p>9 A. I don't know.</p> <p>10 Q. So would it surprise you for me to say that I've got an</p> <p>11 amendment right here, and I'll show it to you, that we show</p> <p>12 15 structures within 1 mile of the Beadle -- 57, I'm sorry,</p> <p>13 structures within 1 mile of the Beadle County pump station?</p> <p>14 Would that surprise you to learn that we've amended our</p> <p>15 Application to say that?</p> <p>16 A. Yeah.</p> <p>17 Q. How many structures did you count on your --</p> <p>18 A. 48.</p> <p>19 Q. And we've got 57?</p> <p>20 A. Okay. 48 and if you take my grandparents' farm, there</p> <p>21 would be 24 and -- there will be 26 more. I didn't put them all</p> <p>22 in, just in case I wasn't quite right.</p> <p>23 Q. I'll show it to you, and you can have that.</p> <p>24 A. Okay. When was this amended?</p> <p>25 Q. August '07.</p>

<p style="text-align: right;">921</p> <p>1 A. Okay. When did the Environmental Impact Statement get  2 printed? I've read that sucker.  3 Q. It's up there on the corner of the table. I think the  4 answer to your question is August. I'm the one asking the  5 questions.  6 A. Well, you gave me this with August. I mean, I'm just  7 wondering because I got my book after that so that's why I'm  8 wondering why wasn't it in here then? I'm sorry.  9 Q. I've just got a couple more questions.  10 A. Okay.  11 Q. Did you go to the State Department scoping meeting in  12 Clark?  13 A. I've been at all meetings but the last one -- which is the  14 scoping? What one was the -- was the scoping the first one with  15 the four stations?  16 Q. Yes, it was?  17 A. Oh, that was a joke. You know, we asked the same question  18 to all four stations, and we got a different answer at every  19 station. We went home so hurt --  20 In fact, I guess I forgot to tell you. My disease went out  21 of remission, and it's because of this darn project. Since I  22 have gone to that and gone to these meetings I have been so  23 under stress, my doctor told me you've got to get out of it.  24 And I said, I'm trying as hard as I can.  25 I had my chemo treatment this morning before we came here.</p>	<p style="text-align: right;">923</p> <p>1 A. Where we live now, our home -- where we farm this land it's  2 a mile, and we live 8 miles from there -- or 4. About 6 miles  3 from that land.  4 Q. Both your son and your husband --  5 A. We live on the same farm, different houses, yes.  6 Q. And is that pump station location -- as you know it, is  7 that near the Madsen farm, the Madsen property?  8 A. It's on the Madsen -- yeah. No. Southwest of Carpenter,  9 yeah. The property.  10 Q. Is that the Kim Madsen property?  11 A. Yes. Kim Madsen's.  12 Q. Have you -- I don't know if you're aware. Are you aware of  13 whether TransCanada may have relocated that pump station?  14 A. If they relocated it, they've added 10 more structures, but  15 they did lose our grandparents' farm then. Because into  16 Carpenter it's -- to the far edge of Carpenter it's 5,550 feet.  17 And if I remember from school right, 5,280 foot's a mile so part  18 of Carpenter would still be in pumping station. So we're  19 staying with at least the same amount of buildings or a few more  20 if they do relocate.  21 Q. I would assume you probably discuss this project from day  22 to day, from time to time with your neighbors; is that correct?  23 What's your understanding of why a pump station may have  24 moved from the Madsen property to some other property, if you  25 know?</p>
<p style="text-align: right;">922</p> <p>1 And it's all because of this because I was in remission and  2 doing real good. And, yes, I've attended all of those meetings,  3 but the last one you had in Clark I did not. I had a treatment.  4 Q. I apologize sorely. I had no idea of your health problems.  5 And I would like to share my concerns in that regard.  6 Have you shared with the State Department your concern  7 about the number of buildings in Carpenter? I just want to know  8 that. I hope you have.  9 A. I'm not sure who all I sent it to. I think I sent it to  10 our representatives, our senators, a few people in Washington,  11 D.C. Because I just thought that we should be told fair things  12 in the Environmental Impact Statement. But I don't remember who  13 I sent it out to.  14 Q. Very good. Thank you for coming this afternoon,  15 Mrs. Hofer.  16 MR. SMITH: Mr. Rasmussen, do you have questions of  17 Ms. Hofer?  18 MR. RASMUSSEN: No, I do not.  19 MR. SMITH: Mr. Hohn.  20 MR. HOHN: I just have a couple questions, Mrs. Hofer.  21 <u>CROSS-EXAMINATION</u>  22 <u>BY MR. HOHN:</u>  23 Q. Could you tell us and the Commission and everyone here how  24 far is your home and where your son lives from this -- the pump  25 station?</p>	<p style="text-align: right;">924</p> <p>1 MR. KOENECKE: He's asking the witness to speculate.  2 I don't think that's proper. I object.  3 MR. SMITH: Do you know as a matter of fact the answer  4 to that question?  5 THE WITNESS: Yes. Kim Madsen doesn't want it on his  6 land.  7 MR. SMITH: Okay. Thank you.  8 MR. HOHN: I have no more questions. Thank you.  9 MR. SMITH: I guess it's obvious then the objection  10 was overruled.  11 MR. KOENECKE: Thanks. I picked up on that.  12 MR. SMITH: Does staff have any questions of  13 Ms. Hofer?  14 MS. SEMMLER: None. Thank you.  15 MR. SMITH: Commissioner Kolbeck.  16 COMMISSIONER KOLBECK: Yeah. Hi.  17 THE WITNESS: Hello.  18 COMMISSIONER KOLBECK: That map that you held up and  19 how you get your equipment across, is that east or west? The  20 land that wouldn't be --  21 THE WITNESS: It would be the west side. It's closer  22 to the east side of the border, the pipeline.  23 COMMISSIONER KOLBECK: You'd be heading west across  24 the pipeline?  25 THE WITNESS: Yeah. Yeah.</p>



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1 COMMISSIONER KOLBECK: Okay. And then -- oh, I think  
2 your husband gave us this map.  
3 THE WITNESS: Yes.  
4 COMMISSIONER KOLBECK: What mile post are you closest  
5 to? Do you know? There's actually a like 308 -- do you know  
6 your township range and section? If not, I'll find out.  
7 THE WITNESS: Delwin can inform you. I can't. He can  
8 tell you what it is.  
9 COMMISSIONER KOLBECK: I can get that from Tim or  
10 Delwin sometime. I'm trying to keep track of everybody on the  
11 route. That's it. Thanks, Pam.  
12 MR. SMITH: Do other Commissioners have any questions  
13 of Ms. Hofer?  
14 COMMISSIONER HANSON: I had the same question that  
15 Commissioner Kolbeck had in regard to the location. And I was  
16 trying to ascertain it a little bit more accurately. Obviously  
17 you have a number of pieces of property. But if we look at the  
18 town of Carpenter, is your property -- does your property abut  
19 the west side of the town of Carpenter?  
20 THE WITNESS: From the town of Carpenter itself it's  
21 about a few blocks south to highway 28 and ours starts a mile  
22 south of 28 is where ours starts. We are the east section --  
23 half section then. The north half section.  
24 COMMISSIONER HANSON: You're --  
25 THE WITNESS: Go a mile south of Highway 28. From

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1 where the pumping station is proposed, we are 1 mile south. 1  
2 mile south.  
3 COMMISSIONER HANSON: That's where your land --  
4 THE WITNESS: Yes. That's our land right there, yes.  
5 COMMISSIONER HANSON: -- begins.  
6 THE WITNESS: Yes. It's that quarter.  
7 COMMISSIONER HANSON: So that would be the northeast  
8 corner of your property?  
9 THE WITNESS: Right. Right.  
10 COMMISSIONER HANSON: All right. Got you. Thank you  
11 very, very much, and we all hope that this process doesn't  
12 exacerbate your challenges.  
13 THE WITNESS: Thank you.  
14 MR. SMITH: Other Commissioner questions?  
15 CHAIRMAN JOHNSON: Thanks for coming, Ms. Hofer.  
16 THE WITNESS: Thank you very much.  
17 MR. SMITH: You're excused.  
18 (The witness is excused)  
19 MR. SMITH: George, do you want to go now? Pardon me?  
20 MR. PIPER: If you're ready.  
21 MR. SMITH: I think we are. Actually you've been very  
22 patient because you were scheduled at 9 this morning, and thank  
23 you for being accommodating.  
24 (The witness is sworn by the court reporter)  
25 MR. SMITH: Just start out by introducing yourself,

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1 George, and then we'll go through the same drill and get your  
2 testimony qualified here and then --  
3 MR. PIPER: My name is George Piper. I reside at  
4 818 Ninth Street Southwest, Huron, South Dakota. And I am a  
5 member of the board of directors of the South Dakota Resources  
6 Coalition. And it's on behalf of the Board that they asked me  
7 to take part for them in this proceeding.  
8 MR. SMITH: Okay. And as an Intervener in the case  
9 then, did you submit prefiled testimony on behalf of yourself  
10 and on behalf of the organization?  
11 THE WITNESS: I did.  
12 MR. SMITH: And if you were to -- if you were to  
13 testify as to all of those things contained in there today,  
14 would your testimony be substantially the same now that you've  
15 been sworn and under oath?  
16 THE WITNESS: It would be the same.  
17 MR. SMITH: At this point in time, would you like to  
18 offer your prefiled testimony then into evidence?  
19 THE WITNESS: Yes.  
20 MR. SMITH: I think we'll mark his prefiled then,  
21 reporter, as Piper 1.  
22 Is there an objection? It's been offered.  
23 MR. KOENECKE: No objection.  
24 MR. RASMUSSEN: No objection.  
25 MR. HOHN: No objection.

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1 MS. SEMMLER: No objection.  
2 MR. SMITH: Piper 1 is admitted into evidence. And  
3 then would you care to summarize your testimony, George, and  
4 offer any additional comment you may have?  
5 THE WITNESS: Yeah. I have some additional comments  
6 to make in addition to my prefiled testimony. And I'm kind of  
7 unfamiliar with your procedure here, but will there be a chance  
8 for asking some questions or directing questions to other  
9 parties?  
10 MR. SMITH: We don't do that right now. We do that --  
11 you would have the opportunity as an Intervener to do that at  
12 the point when they're testifying.  
13 THE WITNESS: I understand.  
14 MR. SMITH: You see what I mean? It's sort of like  
15 with you, you take the stand, and that's the point when you do  
16 that. So at this point in time this is your direct testimony.  
17 So right now the answer is no.  
18 THE WITNESS: Okay. Thank you.  
19 MR. SMITH: You can raise questions, though, if you  
20 want to. If you want to put forth questions that you would like  
21 the Commissioners or staff or myself to pose to someone on down  
22 the road if you're not going to be here the whole time, please  
23 feel free to do that.  
24 THE WITNESS: Okay. I guess first the South Dakota  
25 Resources Coalition is a nonprofit organization that was

<p style="text-align: right;">929</p> <p>1 organized about 35 years ago. And we're an all-volunteer group.</p> <p>2 We have no vested interests in the -- in any property that's</p> <p>3 affected by the TransCanada Pipeline. Nor do we have any</p> <p>4 interests in the TransCanada company.</p> <p>5 We advocate kind of in the public interest on</p> <p>6 environmental and resource issues. We're here to give you maybe</p> <p>7 our opinion and our analysis of some of the information as we've</p> <p>8 perceived it and its impacts on the environment. We're not</p> <p>9 experts.</p> <p>10 I guess our principal concern regarding environmental</p> <p>11 impacts is the potential damage, that things might occur to the</p> <p>12 James River water streams, the environmental -- the wetlands.</p> <p>13 The proposed route of the Keystone line through the</p> <p>14 state follows along the western slope of the James River water</p> <p>15 drainage throughout the state. And it crosses many tributary</p> <p>16 streams and all drainage from this area where the pipeline is</p> <p>17 laid. Surface drainage goes to the James River ultimately.</p> <p>18 The region is also -- has an abundance of very</p> <p>19 important wetland resources in the region. Anyone who may have</p> <p>20 gone through the area or anyone that's familiar with the area</p> <p>21 knows the abundance of these wetland resources, which are an</p> <p>22 important environmental resource in the state.</p> <p>23 Now, as I understand the pipeline anyway, this is</p> <p>24 information -- they've worked with some of the resource agencies</p> <p>25 to route the line to avoid a lot of impacts on the wetlands.</p>	<p style="text-align: right;">931</p> <p>1 exactly sure of the exact location, but it's somewhere</p> <p>2 northwest of Carpenter along the Clark and Spink County line.</p> <p>3 Anyway I would like to -- I have some pictures here</p> <p>4 which show the magnitude -- and these were taken about, oh,</p> <p>5 seven or eight crow miles I call them downstream from the</p> <p>6 proposed location of the pipeline, as I understand the vicinity</p> <p>7 of it.</p> <p>8 I did not measure this distance, but, you know, when</p> <p>9 you're familiar with the area and you know where you're at and</p> <p>10 you know where the head waters is, you know it's off that way</p> <p>11 someplace.</p> <p>12 The number of stream miles is probably greater because</p> <p>13 the -- the stream winds around a lot. And now I think there</p> <p>14 would be a high potential that if there was a spill in that area</p> <p>15 that it certainly could be carried within a long distance down</p> <p>16 this stream flow during times of high water.</p> <p>17 Now the -- we heard extensive testimony this morning</p> <p>18 about the -- about the spill frequency volume study and detailed</p> <p>19 analysis. We're not capable of going into any extensive -- we</p> <p>20 don't have the expertise to do that.</p> <p>21 But we hear the report of the -- or the information</p> <p>22 from the spill frequency volume study that maybe a spill of 50</p> <p>23 to 1,000 barrels at some point in 12 years. Well, how do we</p> <p>24 react to that? Well, maybe that's not too bad. And then we</p> <p>25 hear another prediction of maybe, well, 1,000 to 10,000 barrels</p>
<p style="text-align: right;">930</p> <p>1 However, I think there's still a very important concern that,</p> <p>2 yes, maybe the pipeline won't exactly touch a wetland or --</p> <p>3 anyway I think that's what they consider as far as an impact,</p> <p>4 but considering the potential for spills and what would be the</p> <p>5 impact on the wetlands let's say a mile within the route.</p> <p>6 Certainly some of the spills that have occurred in</p> <p>7 crude oil pipelines, one would not think that it would all be</p> <p>8 contained within the right of way or where the pipe might be</p> <p>9 laid.</p> <p>10 We really questioned whether a firm evaluation has</p> <p>11 been made of the potential impacts on the whole wetland</p> <p>12 environment in the area of the proposed pipeline.</p> <p>13 Now the pipeline crosses several streams along the</p> <p>14 route. And from time to time there are -- there's high</p> <p>15 precipitation experienced in certain areas that can create quite</p> <p>16 high water flow and rapid water flow in some of these stream</p> <p>17 tributaries.</p> <p>18 For example, this past season the weather reporting</p> <p>19 station at Carpenter reported 13.5 inches of rain in the month</p> <p>20 of May and then another 3.5 inches in early June. And this</p> <p>21 raised the -- I have a few pictures to show the flow of one of</p> <p>22 the streams that was -- that absorbed a lot of this runoff from</p> <p>23 the Carpenter area.</p> <p>24 It's the Foster Creek, which as I understand the</p> <p>25 Keystone pipe is proposed to cross this drainage -- I'm not</p>	<p style="text-align: right;">932</p> <p>1 in 39 years. Well, you know, that's some period of time when</p> <p>2 something like this might happen.</p> <p>3 There was even one prediction that, well, maybe -- a</p> <p>4 leak really won't appear along maybe this 10-section mile of</p> <p>5 pipe within 900 years. The matter of the fact is that the</p> <p>6 timing or the location or the quantity of spill cannot be</p> <p>7 really -- cannot be predicted. There's many reports of pipeline</p> <p>8 spills just this past summer.</p> <p>9 On January 1, a crude oil pipeline in Wisconsin</p> <p>10 ruptured and spilled an estimated 500 barrels. And that was a</p> <p>11 Canadian crude oil.</p> <p>12 And then again on the 2nd of February in Wisconsin</p> <p>13 there was another spill. The two combined spills was around</p> <p>14 176,000 gallons. That would be approximately 4,200 barrels.</p> <p>15 And then on July 3 there was a 42,000-gallon spill.</p> <p>16 And this was something critical to us. The question is how are</p> <p>17 we going to evaluate the impacts of such an occurrence for us as</p> <p>18 lay citizens?</p> <p>19 The one at Kansas occurred during a flood there, a</p> <p>20 high rainfall. The oil was washed into a river there into some</p> <p>21 of the drainages, and it was quite a significant impact.</p> <p>22 And then just recently on November 28 a crude oil</p> <p>23 rupture and explosion at Clearbrook, Minnesota.</p> <p>24 The point I'm making is that what does the spill</p> <p>25 frequency volume study -- I don't criticize the methodology of</p>

<p style="text-align: right;">933</p> <p>1 arriving at this because I'm sure they've used the -- you know,  2 very good data. And they have certain methodology. But how are  3 we to really react to making a judgment as to, you know, what  4 really the risk is of a spill of a small magnitude or a big  5 spill and its potential impacts on the environment?  6 Also the timing or the response to a spill or the  7 remediation of the resources that are affected by a spill. Now  8 we are told that, you know, there will be immediate response and  9 things will be taken care of. But that's to just, you know,  10 take care of the accident. But how about the long-term effects  11 of crude oil on the -- on soil and water?  12 I would like to just read one comment from the --  13 again, this comes from the Pipeline Risk Assessment  14 Environmental Consequences Analysis. If remediation activities  15 were not undertaken, natural biodegradation and attenuation  16 would ultimately allow a return to baseline conditions in both  17 soil and ground water. This would likely require a time frame  18 on the order of tens of years.  19 So the thing is that I think there should be a concern  20 as to long-term effects of spills, as well as, you know, the  21 frequency or the -- the remediation of spills. They could be  22 long lasting.  23 Since I won't be asking -- I mean, other people won't  24 be testifying to this, but from the information that I've seen,  25 it's been pretty sparse according to the -- as I said earlier,</p>	<p style="text-align: right;">935</p> <p>1 THE WITNESS: No, they weren't. No. I would like  2 to -- they're pretty much the same. I'll just ask that about  3 two of them be offered because they're about the same. But it  4 shows the high flow of the stream, and actually, you know, it's  5 used as recreation mostly.  6 MR. SMITH: Why don't we mark those as Piper 2 and 3.  7 THE WITNESS: I'll withdraw my comment until --  8 MR. SMITH: Go ahead then, George.  9 THE WITNESS: I'll stand for questioning.  10 MR. SMITH: Okay. Well, with that, did you want to  11 offer your Exhibits 2 and 3 at this time?  12 THE WITNESS: Yes.  13 MR. SMITH: And my recollection is his direct has  14 already been received. I forgot to mark that down. Is that  15 correct? Is that your recollection?  16 MR. KOENECKE: That his direct's already been  17 received?  18 MR. SMITH: I think it was. If it isn't, we'll  19 reoffer it now. Is there any objection to the photos of  20 Foster Creek?  21 MR. KOENECKE: No objection.  22 MR. RASMUSSEN: No objection.  23 MR. HOHN: No objection.  24 MS. SEMMLER: No objection.  25 MR. SMITH: Okay. Your Exhibits 1 through 3 are</p>
<p style="text-align: right;">934</p> <p>1 the evaluation and the potential risk to spills on wetlands in  2 the area.  3 Now, as I understand, the evaluation has been done of  4 the prevalence of wetlands from the mapping system of the  5 national wetlands inventory. And I think that the -- that  6 should be re-looked at and a consideration be made of not just  7 the wetlands along the -- right in the route of the pipeline but  8 the wetlands, you know, adjacent to it that could also be at  9 risk through some of the -- through any kind of a leak or  10 failure that might occur.  11 We have just one recommendation too. We feel that  12 there should be a requirement that TransCanada post a bond or  13 make cash payment with the State of South Dakota to cover the  14 cost of clean up of any crude oil spilled during the lifetime of  15 the project.  16 Now these types of requirements are no more stringent  17 than what are already applied to other industries that impact  18 the environment, like mining. And we feel if such responsible  19 agreements, arrangements, can't be reached, that the permit  20 should really be denied at this time.  21 Mr. Chairman, I believe that's all the additional  22 comments that I want to make right now.  23 MR. SMITH: Thank you. And you had those photos, and  24 I can't recall, George, if those were earlier introduced as an  25 exhibit to something?</p>	<p style="text-align: right;">936</p> <p>1 received into evidence then. Okay. Then at this point in time  2 we'll tender you for cross-examination.  3 THE WITNESS: Yes.  4 MR. SMITH: Mr. Koenecke.  5 MR. KOENECKE: Thank you, Mr. Smith.  6 <u>CROSS-EXAMINATION</u>  7 <u>BY MR. KOENECKE:</u>  8 Q. Good afternoon, Mr. Piper. Have you reviewed the entire  9 submission by TransCanada to the PUC?  10 A. I have reviewed the risk -- the construction and mitigation  11 plan. That was one of the documents. And the risk assessment  12 environmental consequences document principally.  13 Q. Have you reviewed any of the biological resources  14 submissions which we've submitted to the Commission?  15 A. If there have been any recently, I have not.  16 Q. How far back would you have done so? We submitted in  17 April.  18 A. Additional documents?  19 Q. We submitted the Application with the exhibits in April.  20 A. I believe I've seen those. I believe I have seen those.  21 Q. And it's your testimony that they were not satisfactory?  22 A. The part -- the biological data?  23 Q. Yes.  24 A. Yeah. Well, to my -- to us I think it was quite sparse  25 and, you know, you know, the evaluation of the wetland</p>

<p style="text-align: right;">937</p> <p>1 inventory, you know, within the region. And, you know, it's the</p> <p>2 risk to that.</p> <p>3 Q. When you say region what are you identifying?</p> <p>4 A. Well, the wetland region along the proposed route. It's in</p> <p>5 that area -- in the area where there's a lot of wetlands. I</p> <p>6 mean, it's mostly -- it's probably more in the northern half of</p> <p>7 the route that --</p> <p>8 Q. Are you able to identify anything for me that you think was</p> <p>9 skipped or missed?</p> <p>10 A. Well, as I said, the -- my question was is that what was</p> <p>11 the breadth and the extent of the evaluation of the wetland</p> <p>12 inventory as shown on the national wetland inventory mapping</p> <p>13 system.</p> <p>14 Q. And you simply think it was sparse?</p> <p>15 A. I think it was, yes.</p> <p>16 Q. Is that your testimony? And are you an expert in mapping?</p> <p>17 A. No, I'm not. I -- no. I'm not an expert in mapping.</p> <p>18 Q. Okay. Are you an expert in wetland inventories or</p> <p>19 wetlands?</p> <p>20 A. I'm not an expert in that area. I'm representing the</p> <p>21 concerns of our organization. As I said, we're not experts. We</p> <p>22 are -- you know, we're volunteer people.</p> <p>23 Q. Very well then.</p> <p>24 A. Did you have further question?</p> <p>25 Q. I don't think I do. Thank you.</p>	<p style="text-align: right;">939</p> <p>1 Carpenter?</p> <p>2 A. It's southeast of Carpenter. And the creek -- the head</p> <p>3 drainage is in the Carpenter area north of Carpenter up in that</p> <p>4 eastern Spink County and western Clark County areas.</p> <p>5 Q. And were you here when Delwin and Pam Hofer submitted their</p> <p>6 testimony?</p> <p>7 A. Yes.</p> <p>8 Q. And Mrs. Hofer and Mr. Hofer testified, and they submitted</p> <p>9 a map, exhibit -- it's D. Hofer 2, referencing a pump station at</p> <p>10 MP 310, mile post 310, half a mile south of Carpenter. The pump</p> <p>11 station -- that would be right along that highway. So where</p> <p>12 would -- from Carpenter then where would the creek and</p> <p>13 Lake Byron be?</p> <p>14 A. Well, the head waters of the creek would be kind of north</p> <p>15 of Carpenter. That would be the start of the drainage area.</p> <p>16 And then it would -- well, it meanders south and west from that</p> <p>17 area I would say 15 miles maybe to Lake Byron, and then</p> <p>18 Lake Byron is just about a mile from the James River.</p> <p>19 Q. Mr. Piper, did you review the EIS, Environmental Impact</p> <p>20 Statement, on this project?</p> <p>21 A. Briefly.</p> <p>22 Q. And did you submit testimony on the EIS?</p> <p>23 A. I submitted -- yes. I submitted some brief comments.</p> <p>24 Q. The pipeline route, TransCanada Pipeline route as shown on</p> <p>25 Exhibit Hofer Exhibit No. 2, shows it going south of Carpenter.</p>
<p style="text-align: right;">938</p> <p>1 MR. SMITH: Mr. Rasmussen, do you have questions?</p> <p>2 MR. RASMUSSEN: No.</p> <p>3 MR. SMITH: Mr. Hohn.</p> <p>4 <u>CROSS-EXAMINATION</u></p> <p>5 <u>BY MR. HOHN:</u></p> <p>6 Q. Mr. Piper, I have a couple of questions. The pictures of</p> <p>7 the creek that you were showing was Foster Creek?</p> <p>8 A. Foster Creek, yes.</p> <p>9 Q. Where does the waters of Foster Creek terminate? Do you</p> <p>10 know? Is there a reservoir downstream?</p> <p>11 A. It flows into Lake Byron. In the end it's been diverted</p> <p>12 into Lake Byron and it overflows into the James River.</p> <p>13 Eventually the waters flow into the James River.</p> <p>14 Now with the high water level that's shown during these</p> <p>15 pictures and during that time, sometimes towards the termination</p> <p>16 of the stream the bottom land becomes flooded, and that will</p> <p>17 flow directly into the James River bypassing Lake Byron.</p> <p>18 Q. And you're familiar with the Lake Byron area because how?</p> <p>19 What's your familiarity with that area?</p> <p>20 A. Well, I grew up in the area.</p> <p>21 Q. You grew up on a farm in the area?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Just so you can get us all acclimated on a map,</p> <p>24 could you tell us where Lake Byron and Foster might be? What</p> <p>25 landmarks might be nearby or towns? Would this be near</p>	<p style="text-align: right;">940</p> <p>1 And you're saying -- I guess are you saying that this stretch of</p> <p>2 pipeline then crosses Foster Creek once, twice?</p> <p>3 A. Well, as I understand it, it crosses it once, the drainage</p> <p>4 area of the creek, yes.</p> <p>5 Q. Okay. Lake Byron, what are the uses of the Lake Byron</p> <p>6 Reservoir? What is it used for?</p> <p>7 A. Well, it's a recreation area. There are many private</p> <p>8 summer cabins as well as some permanent homes around the lake.</p> <p>9 And there are public use areas managed by the State.</p> <p>10 Q. Is it a fishery?</p> <p>11 A. Yeah. It's fishing. Fishing and recreation and a lot of</p> <p>12 water fowl hunting in the fall.</p> <p>13 Q. You're a member of an organization, South Dakota Resources</p> <p>14 Coalition. What's their main mission or objective if you were</p> <p>15 going to summarize it?</p> <p>16 A. To preserve the natural resources, to -- and the</p> <p>17 protection, protection of the environment. They've taken --</p> <p>18 over the years they've taken up many issues. One of the main</p> <p>19 issues is wetlands and water resources. But they've studied and</p> <p>20 advocated on other issues of the environment.</p> <p>21 Q. And in your opinion as someone who's active in that</p> <p>22 voluntary organization and obviously active enough to come here</p> <p>23 on their behalf and testify, in your opinion how -- what would a</p> <p>24 crude oil spill on Foster Creek do to wildlife in that area?</p> <p>25 A. Well, it would have significant damage and impacts, I</p>

<p style="text-align: right;">941</p> <p>1 believe. You know, if it occurred in the creek drainage and it</p> <p>2 flowed down the creek, it would -- it would have significant</p> <p>3 damage on the creek.</p> <p>4 Q. Okay.</p> <p>5 A. And the associated wildlife and biotic community of the</p> <p>6 stream.</p> <p>7 Q. Mr. Piper, one last question. What is or what has been</p> <p>8 your area of academic study?</p> <p>9 A. I received a B.S. in agriculture from the South Dakota</p> <p>10 State University. And then I completed a Ph.D. in zoology at</p> <p>11 the University of Missouri.</p> <p>12 MR. HOHN: Thank you. No more questions.</p> <p>13 MR. SIEH: I have a couple of questions.</p> <p>14 MR. SMITH: Mr. Sieh. Just a minute, John. You've</p> <p>15 got to be at a mic.</p> <p>16 MR. SIEH: Sorry.</p> <p>17 MR. SMITH: Go ahead. Remember to pull the mic up to</p> <p>18 your mouth there, John. Thank you.</p> <p>19 MR. SIEH: Thank you, Mr. Smith.</p> <p>20 <u>CROSS-EXAMINATION</u></p> <p>21 <u>BY MR. SIEH:</u></p> <p>22 Q. Mr. Piper, your organization in general is a coalition that</p> <p>23 looks after as you say environmental issues or concerns about</p> <p>24 natural resources in South Dakota.</p> <p>25 In your opinion and that of your organization do you feel</p>	<p style="text-align: right;">943</p> <p>1 that probably no compensation would --</p> <p>2 A. Probably. I mean, a crude oil spill with the toxicity</p> <p>3 that -- you know, if it eventually got into an aquifer or --</p> <p>4 probably would be more than 10s of years in its remediation. It</p> <p>5 would probably last for a long time.</p> <p>6 MR. SIEH: Thank you. I have no more questions.</p> <p>7 MR. SMITH: Staff, do you have questions?</p> <p>8 MS. SEMMLER: None. Thank you.</p> <p>9 MR. SMITH: Commissioners, questions of Mr. Piper?</p> <p>10 Mr. Piper, you're excused. Thank you.</p> <p>11 THE WITNESS: Thank you, Mr. Chairman. Thanks for</p> <p>12 holding this hearing.</p> <p>13 (The witness is excused)</p> <p>14 MR. SMITH: Thank you. I think, Mr. Goss, are you in</p> <p>15 the room? I think we're about at your time, aren't we --</p> <p>16 Are you okay with a break there, Mr. Goss?</p> <p>17 MR. GOSS: You bet. Let me get ready.</p> <p>18 MR. SMITH: That's good. I think that suits</p> <p>19 everybody. How long would you like to take? 10 minutes? About</p> <p>20 8 minutes to we'll reconvene then. Thanks.</p> <p>21 (A short recess is taken)</p> <p>22 MR. SMITH: We're now back in session following a</p> <p>23 recess we had here. We ended up with a little longer recess</p> <p>24 than we planned. It's about 5 after 3.</p> <p>25 And at this point in time Ed Goss who's an individual</p>
<p style="text-align: right;">942</p> <p>1 that the route through the Dakotas -- route through South Dakota</p> <p>2 was carefully selected? This was some of the testimony we heard</p> <p>3 yesterday. Was it carefully selected?</p> <p>4 A. Through the area that they went I don't know if you could</p> <p>5 carefully put any kind of a route that would totally avoid, you</p> <p>6 know, potential risks to, you know, the soil and water resources</p> <p>7 of the area, particularly in the line of, you know, the impacts</p> <p>8 of a crude oil spill.</p> <p>9 Q. Do you think there's any location that they could have</p> <p>10 selected to generally get to where they want to go? Go ahead.</p> <p>11 A. Well, there have been suggestions that there would be an</p> <p>12 alternative route along I-29. Now there might be certain</p> <p>13 considerations that that might be a better route, more</p> <p>14 accessible or anything. But we haven't taken a position or</p> <p>15 we're not interested in a position of putting it there because</p> <p>16 that's just putting it on to somebody else.</p> <p>17 Q. So your position is that the permit shouldn't be granted?</p> <p>18 A. Unless -- the only -- I gave conditions that the permit --</p> <p>19 I mean, there must be very firm commitment by the operator that,</p> <p>20 you know, things would be -- that everything would be taken care</p> <p>21 of both costwise and -- if those things got to be, then I would</p> <p>22 say yes, the permit should be denied.</p> <p>23 Q. I have just one last question. The issue of compensation</p> <p>24 for cleanups and so on has been raised. In the opinion of your</p> <p>25 organization, do you feel there's some environmental hazards</p>	<p style="text-align: right;">944</p> <p>1 Intervener in the case is scheduled to testify. And, Mr. Goss,</p> <p>2 we're ready to have you be sworn in.</p> <p>3 (The witness is sworn by the court reporter)</p> <p>4 MR. GOSS: And help me, Dee. That's my wife. Well,</p> <p>5 50 years.</p> <p>6 MR. SMITH: Mr. Goss, you filed prefiled testimony in</p> <p>7 the case. Maybe I'll start out having you introduce yourself</p> <p>8 and say where you're from and all of that.</p> <p>9 MR. GOSS: My name is Ed Goss, Edward officially. As</p> <p>10 I said, my home is where the pipeline goes through. My</p> <p>11 residence for the past several years is between Belle Fourche</p> <p>12 and Spearfish. My official address is 10997 Minnesila Road,</p> <p>13 Belle Fourche, South Dakota.</p> <p>14 MR. SMITH: Thank you. And did you prefile testimony</p> <p>15 in the case?</p> <p>16 THE WITNESS: Yes. And I'd like to enter that as</p> <p>17 whatever you call it.</p> <p>18 MR. SMITH: As an exhibit? Sure. And if you testify</p> <p>19 here today as to the matters that are contained in the prefiled</p> <p>20 testimony, would your testimony be essentially the same?</p> <p>21 THE WITNESS: Yes, sir. It would.</p> <p>22 MR. SMITH: Thank you. I'm going to have that labeled</p> <p>23 Goss 1. And at this point would you like to offer your exhibit?</p> <p>24 THE WITNESS: Yes, sir.</p> <p>25 MR. SMITH: You don't need to -- we have a copy of it.</p>

<p style="text-align: right;">945</p> <p>1 THE WITNESS: Yep. Yep.</p> <p>2 MR. SMITH: Is there an objection to the admission of</p> <p>3 Goss 1?</p> <p>4 MR. KOENECKE: No objection.</p> <p>5 MR. RASMUSSEN: No objection.</p> <p>6 MR. HOHN: None.</p> <p>7 MR. SMITH: Your exhibit is introduced. Mr. Goss,</p> <p>8 could you please then proceed with your summary and your</p> <p>9 testimony to the Commission.</p> <p>10 THE WITNESS: Okay. First of all, I'd like to thank</p> <p>11 the Commission and TransCanada and all the other Interveners.</p> <p>12 It's been educational and kind of fun. I don't know how much</p> <p>13 fun when we get done with it. But anyway there's been some good</p> <p>14 testimony.</p> <p>15 I'd like to -- one of my notes said when Mr. Tim Hofer</p> <p>16 testified, this being home kind of gets to your heart with your</p> <p>17 family and your land.</p> <p>18 Anyway, some of my concerns are the pressure in the</p> <p>19 thinner-walled pipe. Some of the ads that have been talking</p> <p>20 about taxes are misleading. Because I can assure you that in</p> <p>21 two to five years they will not be giving anywheres near that</p> <p>22 amount to the Carthage School District.</p> <p>23 I have some concerns bonding or whatever for township</p> <p>24 roads, Esmond Township where this pipeline crosses my property.</p> <p>25 In the wintertime there are many roads that are never opened --</p>	<p style="text-align: right;">947</p> <p>1 back to the Mandan line. And we brought three maps after</p> <p>2 listening to their first opening statement as to what they were</p> <p>3 going to do with the Mandan line. We laid three maps out on my</p> <p>4 floor in my dining room in Esmond Township, and in half an hour</p> <p>5 we designed where we would put the line in their 80-mile</p> <p>6 corridor.</p> <p>7 We were wrong. We missed it by one mile. I still</p> <p>8 think they were wrong. They should have put it one mile over</p> <p>9 and gotten that much farther away from an underground aquifer</p> <p>10 west of Iroquois.</p> <p>11 Now you say we can -- TransCanada has indicated pretty</p> <p>12 much that they work in good faith with landowners. And I've</p> <p>13 seen that in print and heard it many times. It's agreed that</p> <p>14 landowners can testify at this hearing as to how we've been</p> <p>15 treated.</p> <p>16 I've heard a little bit of the testimony on the</p> <p>17 internet, not all of it. I believe it was Lillian Anderson that</p> <p>18 mentioned that not enough research was done on the effect to</p> <p>19 crops. And I can't find a lot of information on extra heat to</p> <p>20 crops. I have contacted a county agent.</p> <p>21 I've got documentation on this if anybody wants it</p> <p>22 from county extension and South Dakota State that for winter</p> <p>23 wheat there must be a dormancy of 40 days and -- 24-hour</p> <p>24 consecutive periods for that winter wheat to produce. I don't</p> <p>25 have any idea -- I would suggest that all the money that's being</p>
<p style="text-align: right;">946</p> <p>1 township roads, excuse me -- and those that used to be when they</p> <p>2 picked a lot of corn, why, we'd say if you got corn in the crib</p> <p>3 out there at the end of the corn field, you better get it out</p> <p>4 before the big snow hits because we don't intend to open those</p> <p>5 roads.</p> <p>6 So I don't care what you say. There will be</p> <p>7 additional damages with extra trucks. I don't care whether you</p> <p>8 say extra grain trucks, extra gravel trucks, or hauling pipe</p> <p>9 trucks.</p> <p>10 My sequence of events with TransCanada folks started</p> <p>11 on November 14, 2005. They were presented some questions at the</p> <p>12 Miner County Commissioner meeting on that date. Before I go any</p> <p>13 farther I guess the location of this -- I'm going to end up</p> <p>14 rambling. The location of this line in my opinion should be on</p> <p>15 that ridge between De Smet and Iroquois.</p> <p>16 Back in the days of the dams being built on the</p> <p>17 Missouri River there was talk of irrigation in eastern</p> <p>18 South Dakota coming out of the one in North Dakota. And it was</p> <p>19 to come down that -- the most logical location. And it is to</p> <p>20 this day the most logical location for most anything. If you</p> <p>21 want to look at a water resources map or lakes map, you will see</p> <p>22 that the pothole country of South Dakota begins at that ridge</p> <p>23 and goes to the east, northeast and ends up in 10,000 lakes in</p> <p>24 Minnesota.</p> <p>25 So in my opinion that's where I'd look first. I go</p>	<p style="text-align: right;">948</p> <p>1 spent on this hearing and what effect it has on agriculture, I</p> <p>2 would propose that it would be a perfect time for TransCanada to</p> <p>3 protect us and them, and I would propose that they -- I will</p> <p>4 contact or they can contact a researcher at this time.</p> <p>5 As soon as -- I'd be getting that researcher to start</p> <p>6 doing testing on temperatures within the proposed pipeline</p> <p>7 easements for this winter and next summer, and then if and when</p> <p>8 the proposed pipeline should become operational, that they would</p> <p>9 then test again those temperatures. And it's pretty darn easy,</p> <p>10 and I've done it.</p> <p>11 It's pretty darned easy to -- even on native grass to</p> <p>12 put a cage and see what a 4-foot cage within or over the</p> <p>13 proposed pipeline versus a certain distance away and look -- I</p> <p>14 mean, I'm not going to do it but the researchers can tell. I</p> <p>15 think it would be a good thing for all of us, a good opportunity</p> <p>16 for pipeline builders and South Dakota farmers to know what</p> <p>17 effect that additional temperature will make.</p> <p>18 I'm not sure that I know what the temperature in that</p> <p>19 line's going to be, but if it's between 70 and 80 degrees</p> <p>20 Celsius, that's 175 degrees -- I believe 167 degrees Fahrenheit.</p> <p>21 What I've read about the pipeline in Canada -- or in</p> <p>22 Alaska, excuse me, which is a 4-foot pipeline -- and I forget</p> <p>23 how much it pumps per day and under what pressure. But that</p> <p>24 4-foot pipeline runs around 175 degrees. And one of the books I</p> <p>25 have found that their research -- they have indicated that the</p>

<p style="text-align: right;">949</p> <p>1 thawing, had it been in the ground -- I don't recall now whether  2 it says in the ground or on the ground. Thawing would be down  3 in the permafrost approximately 50 or 51 feet. They estimate  4 that it would be the same above.  5 So that pretty well tells me -- and I'm sorry. I  6 don't know whether that 70 to 80 degrees that I've read is  7 Celsius or Fahrenheit, but it's going to change the temperature.  8 Now I have not in South Dakota found that there was any time  9 that heat was added to any product that I'm familiar with when  10 you add heat to something with moisture in it, seems to me it  11 dries out faster.  12 And if you live in western Kingsbury County where this  13 proposed pipeline goes, you don't want it drying out any faster.  14 Esmond Township did not have any one bale of hay produced in  15 1976, by the way, just to give you an idea of how dry we were.  16 It's interesting to me that somebody has stated that  17 they were not contacted until they were sent condemnation. I  18 was contacted -- or I had a lot of telephone calls back and  19 forth, but nobody, not one person, not one land agent ever made  20 an effort to say could I come and meet with you.  21 I don't like to deal -- a guy from North Dakota, 701  22 area code -- I think his first name was Jack -- called me, and I  23 didn't even have the foggiest idea what he was talking about.  24 He wanted to buy some land. I didn't have any land for sale.  25 Well, then I got to finding out and -- I visited with this</p>	<p style="text-align: right;">951</p> <p>1 And, of course, I think there was 12 questions. I  2 have those if somebody wants them. I think it was number 10  3 came back with two different answers. But having dealt with a  4 multibillion dollar electric line in the Nebraska public power  5 district, I've not dealt with a multibillion foreign outfit  6 before, I didn't expect the answers to come back any different  7 than they did.  8 One of my sections sits against the Miner, Kingsbury  9 County line, Section 34. And if you put an imaginary line or a  10 hairline down the middle of that road, this Jerry, the land  11 agent that I spoke with, indicated to me that if my land was on  12 the south side of the road, it would be worth 3 to \$500 more per  13 acre. And I said who in the blankety-blank ever figured out  14 that the exact same type of ground 66 feet away is worth 3 to  15 \$500 more?  16 Well, that's what we do. Well, I don't think that  17 makes too much sense. I believe Jerry told me that they paid 3  18 to 500 more in Miner County than they do in Kingsbury County.  19 He could tell you the exact difference.  20 Okay. Let's talk about my land. And I guess for  21 easier descriptions, I would pass out the maps and maybe the  22 photos. Nobody's got their maps. I'm dealing with the maps, I  23 think, that TransCanada put out. I'm looking for help, lady.  24 Come on.  25 (Discussion off the record)</p>
<p style="text-align: right;">950</p> <p>1 Buster Gray here and I had good interesting -- he has a lot to  2 do with these land agents. And the folks that I've had to deal  3 with there's been one in a car accident. I think there was one  4 pregnancy. I had a Tim, a Tom, a Willard, and finally I've got  5 to this Jerry fellow that we're now negotiating. So it was  6 clear into October before I began to get anywhere.  7 I did not know that this pipeline was going to cross  8 my land on Section 22 until May 2 of 2007 when I stopped at the  9 PUC office. And I don't recall whether I talked to Kara Semmler  10 or Mr. Smith or just who it was. But anyway they said, well,  11 now you know. Because he handed me a map that had it across my  12 Section 22.  13 If you want to back up to a Regan maybe, he had me on  14 Section 27. I don't own a piece of ground on that. We went  15 round and round. He didn't -- I won't tell you how they spelled  16 my wife's name. At least it was a woman. It wasn't a husband.  17 But anyway -- this kind of upsets you when you get something  18 that they misspell -- all of us don't like to have our names  19 misspelled.  20 But here is field survey authorization, which they're  21 asking me to give them permission for a field survey on the  22 southwest of 27, 109, 58. I don't believe the pipeline crosses  23 that. But that's the kind of stuff when I begin to get -- after  24 not getting answers from my November '05 until I triggered that  25 with several e-mails to TransCanada to get answers to those.</p>	<p style="text-align: right;">952</p> <p>1 THE WITNESS: You guys got good help.  2 COMMISSIONER HANSON: That's what she keeps telling  3 us.  4 THE WITNESS: Okay. On Section 22 the line crosses --  5 and I think that will be the front one. It's mile -- whatever  6 MP means, mile point 339, the southeast of 22, 109, 58. That  7 just barely crosses the corner of that quarter section.  8 The easement shows that the centerline is 170 feet  9 from the section line. By the way, that's a vacated -- the word  10 is vacated section line. That is not for transportation. It  11 has been officially vacated by Esmond Township. But anyway  12 it's --  13 So that leaves me somewheres between 85 and 95 feet to  14 turn equipment around in, in that southwest corner. The high  15 ground on the entire section -- by the way, grandpa bought this  16 in 1910, the south half of 22. If you look -- the farm  17 buildings are over in the lower right-hand corner. That's where  18 I spent over half of my life.  19 I don't believe there's any -- that's native grass  20 over on the right-hand side. That's native grass up in the  21 northwest corner. But the pipeline does not cross either of  22 those.  23 But just to give you a background, grandpa and dad and  24 I have made a concerted effort to save native grassland. Way  25 back when Grandpa Aunba (phonetic) was plowing land for</p>

<p style="text-align: right;">953</p> <p>1 Grandpa Goss with a steamer, Grandpa Goss said to my father who  2 was a young 20 years of age about, you know, the old Indian was  3 right, wrong side up. So from that point on we had made a  4 concerted effort to save native grass.  5 There's poor cell phone reception in that area.  6 Talked to a PUC employee, Steve Wegman, that morning, and he's  7 aware of that. And the ideal spot would be right approximately  8 where the pipeline comes on that high ground west of mine.  9 We're stopped from making any development once that proposed  10 pipeline if that's where it goes -- it shouldn't go. It should  11 go east.  12 Anyway, I'd like to have a tower there so you can use  13 a cell phone, which you can't. You can't build feedlots there.  14 The overall distance that that crosses that property, I believe  15 the easement shows 660 feet. I think they could holler from one  16 side to the other. But, remember, I said vacated section line.  17 I said 95 to 85 feet from that vacated section line before you  18 hit the easement property.  19 I can guarantee you because of the approaches in there  20 and because of the county road some guy's going to go in there  21 and walk that 95 feet across the property that he's got no right  22 to be on.  23 They sent -- so my proposal, and I talked to Mr. Gray  24 and he has some recognition of what I'm talking about -- if this  25 line on this section was moved 245 feet to the west, it would be</p>	<p style="text-align: right;">955</p> <p>1 The offer of money I've been offered -- and this will  2 relate back -- I think I listened to some of Mrs. Anderson's  3 testimony about \$36 an acre, and I think she figured for the  4 number of acres she had.  5 And in my case I was offered \$2,520 an acre. Grandpa  6 bought that in 1910, 97 years ago. This figures out to rent of  7 \$25.97. One of the Commissioners asked Ms. Anderson about the  8 investment on that. I need to take you back 97 years to invest  9 that money, not today's money with my figures. Grandpa probably  10 paid 10 bucks an acre for it. But if he paid 50, the current  11 return to me to investment would be \$25 an acre.  12 That land in and around my property on Section 22 and  13 Section 34 currently rents -- and I'll tell you it's from 60 to  14 80 bucks, and that's on the high side. I'm going to modify it  15 down to maybe 55, 60 bucks an acre. So if I make my investment,  16 I'm going to be looking at less than half. These things need to  17 be negotiated over a period of years as times and money changes.  18 And let me tell you, folks, I can't -- my proposal, my efforts,  19 my time to go around and see how much money I have spent  20 attending meetings because of the crude oil pipeline -- and I  21 think I upset their attorney one day when I asked him about them  22 paying my bill.  23 And anyway they're for profit. This is costing the  24 farmers to try to protect their property. That's really kind of  25 not the way we like to do business.</p>
<p style="text-align: right;">954</p> <p>1 off Section 22, my high ground and just plumb away.  2 We've had some discussion on that. I know two of the  3 landowners -- I know the landowner on 23 is acceptable. I  4 couldn't tell you on 28. Or 21 and 28. 21, that individual's  5 agreed to have this pipeline moved. And I can't tell you about  6 the other. And I think I know, but I'm not going to -- I have  7 not asked them personally.  8 No easement should ever be perpetual. I've read where  9 their supply will be somewhere around 18 to maybe 50 years of  10 oil. I can't believe that steel of any sort would last forever.  11 I would like to -- if I'm required by the courts to  12 allow this to cross my property, I would propose easements with  13 some different changes in, quite a few different changes. I'm  14 not prepared to say all of those from the standpoint of I have  15 an attorney hired, and we've got some proposals that we think  16 would make some sense.  17 So when you're done pumping oil through a line why in  18 the world -- why in the world leave it there? I think  19 Commissioner Hanson is aware of what's happening with the  20 missile site out in western South Dakota. Those boys are  21 pulling thousands and thousands and thousands and thousands of  22 dollars of copper out of the ground. Well, they were fortunate.  23 They get to sell the copper. The easement's gone. The Federal  24 Government gave it back to them. That was an end use deal.  25 I'll say that the Federal Government did the right thing.</p>	<p style="text-align: right;">956</p> <p>1 Some of the land up in the Groton area I was told in  2 the last month sold for 3,900 to \$4,000 an acre. I can't  3 document that. I don't know. Got an e-mail on that.  4 I don't want anybody to get shook up. We take cash  5 rent on our Kingsbury County land, but in Marshall County --  6 you've heard a lot of testimony on Marshall County. We are on a  7 share basis up there so -- and that pipeline doesn't affect our  8 property in Marshall County. So I just wanted to tell you that  9 the way we receive -- in 2007 I will say.  10 What 2008 will do on the Kingsbury County land, I know  11 I'm not going to charge him for something he can't use. And I  12 think TransCanada needs to be paying me rather than not having  13 it being used.  14 Okay. Let's get down to Section 34. That one leaves  15 me 25 feet between the corner post and the easement. Well, I  16 got a trailer that I couldn't park in there length ways, you  17 know. And the gentleman whose house shows up in the lower  18 left-hand corner has accepted payment for his going across the  19 southwest of Section 34.  20 That L-shaped land on there is all native grass  21 against that fence. And there's a water dugout right under the  22 word "four," and that drains out into the county ditch and goes  23 west and under the road.  24 On native grass you heard blowouts. There's blowouts  25 on some of our native grass, but it wasn't due to light sands,</p>



<p style="text-align: right;">957</p> <p>1 and it wasn't done at the turn of the century. The geologists  2 estimate that the blowouts on some of our native land probably  3 happened in the 1500s to the 1600s, and that was due to an  4 extremely severe drought they think and it's a whole different  5 ball game.</p> <p>6 There weren't a heck of a lot of trees that grew, but  7 there was a heck of a lot of buffalos running around in the  8 country about that time. And they didn't have any place to  9 scratch except if there was a rock sticking out in the ground.</p> <p>10 Can you see the light spot at the top -- that's one of the  11 biggest buffalo wallows -- well, yeah. We got another one  12 that's about that size. But that one happens to be farmed  13 around.</p> <p>14 Grandpas got pretty wild with the plow back in 1926.  15 But that is evidence of a buffalo wallow on that native grass.  16 And we've got, gosh, I don't know, six or seven of them on our  17 property. And I could give you directions to see one if you  18 travel between Manchester and Carthage within 10 rods of that  19 highway.</p> <p>20 That's what -- things that I think need to be  21 preserved in the environment. And when we reseed -- I'm talking  22 about the grandpas because we've owned that since 1910. We've  23 had some land that just didn't work worth a hoot. The Indian  24 was right. It was wrong side up. That was plowed up. And part  25 of that is fenced in with not this particular piece but on</p>	<p style="text-align: right;">959</p> <p>1 particular -- knowing that that easement -- if anybody wants  2 to -- anymore clarification -- well, I can do it -- do I have  3 the opportunity to present additional items in the questioning  4 session of -- Mr. Smith, why don't you turn me over to --</p> <p>5 MR. SMITH: You may.</p> <p>6 THE WITNESS: I can present things at that time?</p> <p>7 MR. SMITH: Depending, I guess. Are you --</p> <p>8 THE WITNESS: I will be offering these maps. And  9 then --</p> <p>10 MR. SMITH: You have two sheets of paper here.</p> <p>11 THE WITNESS: Yeah. Here's the other one.</p> <p>12 MR. SMITH: With handwriting on it.</p> <p>13 THE WITNESS: This one, uh-huh. And this shows the  14 county road, the distance of travel and so on, and I would like  15 to present those at this time if I could.</p> <p>16 MR. SMITH: To mark that and also this packet of  17 papers that we have here.</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. SMITH: Maybe what we should do is -- I don't  20 know, Cheri. Have you been given copies of those things?</p> <p>21 THE COURT REPORTER: No.</p> <p>22 THE WITNESS: There's that one. Mark that one. I'm  23 short one map on my other one. I'd give it to her.</p> <p>24 CHAIRMAN JOHNSON: Am I to understand the two white  25 pages you handed out are simply each side of the pink?</p>
<p style="text-align: right;">958</p> <p>1 Section 23 it's fenced in with native grass. It's never had a  2 plow in it. I can show you those blowouts and additional  3 buffalo wallows.</p> <p>4 And you know what? Dad doesn't call that native  5 grass. That grass to all of us on all of our pastures that have  6 had a plow in it -- to us that is go back. And let me tell you,  7 it ain't the same grass that's next to it. It's not. And it's  8 never been touched since probably before the '30s. So that's  9 what, 70, 80 years?</p> <p>10 And that grass I can take it and show it to you on  11 Section 23, the southwest quarter. It's go back ground. It's  12 not native. You better get that through your head. It's not  13 the same. And I think maybe that's why the Federal  14 Government --</p> <p>15 Now I probably messed up some time ago when I took a  16 water fowl easement on that at the time that I was -- I still  17 had a debt on it so I had to get the permission of the people I  18 was paying for that land. And I didn't know that they had  19 native grass -- the Federal Government had native grass  20 easements.</p> <p>21 So, therefore, I took a wetland easement on this  22 particular quarter. And the reason was was to save that buffalo  23 wallow in that native grass because I figured nobody could drain  24 it. And that's what that easement does.</p> <p>25 But that was my error for not finding that</p>	<p style="text-align: right;">960</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 CHAIRMAN JOHNSON: That white one doesn't need to  3 have -- so Exhibit 3 is the front and the back of the page we  4 handed out.</p> <p>5 THE WITNESS: Thanks, Dusty.</p> <p>6 CHAIRMAN JOHNSON: Exhibit 4 no longer exists. Is  7 that okay, Cheri?</p> <p>8 THE COURT REPORTER: Yes.</p> <p>9 MR. SMITH: At this time then I'm assuming you want to  10 offer other Exhibits 2 and 3 then?</p> <p>11 THE WITNESS: That's correct.</p> <p>12 MR. SMITH: Any objection?</p> <p>13 MR. KOENECKE: I actually have just a question, I  14 think, before we go forward.</p> <p>15 Mr. Goss, on Section 22, your map -- see the one I'm  16 holding up? Isn't that the southwest quarter of 22?</p> <p>17 THE WITNESS: Southwest? What does it say on the map?  18 Does it say southeast? Yeah. That is southwest.</p> <p>19 MR. KOENECKE: Okay. So you've written southeast on  20 there so you'd want that changed to say southwest corner,  21 Section 22?</p> <p>22 THE WITNESS: Yeah.</p> <p>23 MR. SMITH: I don't know what it says anymore because  24 I don't -- okay.</p> <p>25 MR. KOENECKE: He's written right in the middle --</p>

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1 that's your handwriting; right?

2 THE WITNESS: No. It's not.

3 MR. KOENECKE: Someone wrote "southeast quarter?"

4 THE WITNESS: No. This is not my handwriting. The

5 other ones up here that you can't read, that's mine.

6 MR. KOENECKE: Very well. I think the map with mile

7 post 339 in it is actually referring to the southwest quarter of

8 22.

9 THE WITNESS: You're absolutely right.

10 MR. SMITH: With that clarification, no objection.

11 I'm assuming you don't have any objection.

12 THE WITNESS: I'm going to find out who in the devil

13 wrote that because I didn't.

14 MR. SMITH: Goss Exhibits 2 and 3 are received in

15 evidence.

16 THE WITNESS: Thank you, Mr. Koenecke.

17 MR. SMITH: At this point then, Mr. Goss, I'm going to

18 tender you for questions from the other parties, if that's okay.

19 Are you ready for that?

20 THE WITNESS: Hold on. No, I'm not. I'm not.

21 I have what I think is probably where we are with my

22 negotiations that I spoke with Mr. Gray this morning. And I'd

23 like to have those as -- you call these things issues, evidence?

24 What am I presenting?

25 MR. RASMUSSEN: Exhibits.

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1 THE WITNESS: Exhibits. Thank you.

2 MR. SMITH: Exhibits, yes.

3 THE WITNESS: This packet I'd like to have entered. I

4 think it's important for everybody to see these.

5 MR. KOENECKE: I'll have to come up and see what it

6 is.

7 MR. SMITH: Yeah. We don't know what those are.

8 Sorry.

9 THE WITNESS: Hand it to him. Am I supposed to put

10 out some testimony as to what I'm going to present first? Is

11 that the deal? Makes it easier? Just tell me.

12 MR. SMITH: If you want to. We'll just have to have

13 descriptions. If you've got a number of exhibits, we'll need to

14 know what those are. It looks like a series of correspondences.

15 THE WITNESS: Yes, it is.

16 MR. KOENECKE: This is going to take us a couple of

17 minutes to figure out. It's extensive and contains things that

18 might relate to the Motion in Limine. It might take a few

19 minutes.

20 THE WITNESS: Mr. Koenecke, is it okay if I was to

21 testify on these and then you turn them down or accept them?

22 MR. KOENECKE: In my opinion, no.

23 THE WITNESS: How about you, Mr. Smith?

24 MR. SMITH: Well, you may or may not have been

25 listening. At the beginning of the case --

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1 THE WITNESS: No. I'm sorry. I missed the very front

2 end.

3 MR. SMITH: That's when this happened. We went

4 through a motion regarding evaluation issues. Because those are

5 something that we don't have any authority over. That's a court

6 issue. And with respect to certain elements of it with respect

7 to landowner relations and fairness and that, we ruled that that

8 evidence is properly -- that we can hear that because that

9 relates to social and economic welfare, et cetera. With respect

10 to specific valuation -- but I don't know what's in those so I

11 don't know --

12 THE WITNESS: Can I present them to you?

13 MR. SMITH: Well, then they would be evidence, and so

14 the answer is probably no in terms of evidence anyway in the

15 case. I think if you want to just go through and make your --

16 and tell us what they are and what you think they are, that's

17 fine with me. But in terms of receipt into evidence, if they

18 deal with valuation issues, that's something the Commission has

19 no power over at all.

20 THE WITNESS: What this is is where we are on

21 negotiations on moving our easements, on moving this. It's a

22 correspondence between the land agent and my attorney. Is that

23 correct, Mr. -- Brett?

24 MR. KOENECKE: It is. And you'd agree with me that it

25 contains financial figures, IRS forms and letters back and

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1 forth, and we think this is clearly what was intended to be kept

2 out by the Motion in Limine. This isn't relevant to the

3 discussion here today. So we would object to the admission of

4 these as evidence.

5 MR. SMITH: Okay. I'm a little less sure on questions

6 regarding moving. That to me is a different thing than

7 valuation, which is what the Court does. And I -- I don't think

8 the Motion in Limine -- I don't know that that's a --

9 THE WITNESS: Let's pull what he's objecting to and

10 use the balance.

11 MR. SMITH: Do you want a few minutes, Mr. Koenecke,

12 to review those then?

13 And then other than these correspondence sets, are

14 there other things --

15 THE WITNESS: If they want pictures of the location of

16 my house and the low ground and all of this stuff I talked

17 about --

18 MR. SMITH: I think those are fair exhibits.

19 THE WITNESS: Let's --

20 MR. SMITH: You might want to describe what those are.

21 THE WITNESS: Okay.

22 MR. SMITH: Why don't you do that while they're

23 looking at that stuff.

24 THE WITNESS: They ain't going to pay no damn

25 attention to my pictures anyway. Sorry you folks on line.

<p style="text-align: right;">965</p> <p>1 Anyway this one shows the low ground of Section 22. And that --</p> <p>2 there's a culvert goes right through there where they're coming</p> <p>3 with the proposed pipeline. And Mr. Gray was pleased to have</p> <p>4 that pointed out to him because he felt the surveyors didn't --</p> <p>5 this one just identifies that we're right at the corner where</p> <p>6 the evidence shows that we're 170 feet from that vacated section</p> <p>7 line. This one simply shows my home from where it is to prove I</p> <p>8 guess I lived there once.</p> <p>9 And this one shows the low ground on the other side of</p> <p>10 the road opposite of where the culvert drains. And this one</p> <p>11 shows the native grass on Section 34.</p> <p>12 MR. SMITH: 34?</p> <p>13 THE WITNESS: Yeah. And I'd like to present those.</p> <p>14 And if these folks want -- I've got four copies of each so if</p> <p>15 they want copies of the photos, they're sure welcome to them.</p> <p>16 MR. SMITH: We'll give those to the reporter, and she</p> <p>17 can mark those while we're hearing from Mr. Koenecke here.</p> <p>18 MR. KOENECKE: My objection is limited to the front</p> <p>19 page.</p> <p>20 THE WITNESS: I figured so.</p> <p>21 MR. KOENECKE: And the rest is to put in. I have no</p> <p>22 objections to the remainder of these pages. The front page, the</p> <p>23 letter dated November 23, 2007, we maintain our objection as to</p> <p>24 that in evidence in the hearing.</p> <p>25 MR. SMITH: Okay. Again, I'm a little hampered</p>	<p style="text-align: right;">967</p> <p>1 MR. SMITH: Yes. They have a right to look at it and</p> <p>2 weigh in.</p> <p>3 CHAIRMAN JOHNSON: Mr. Goss, I still need to clarify</p> <p>4 where we're at here. Everything except the front page like</p> <p>5 everybody's fine being entered in evidence.</p> <p>6 At one time you said if he objects to it, let's pull</p> <p>7 the objectionable piece out and -- that front page, do you want</p> <p>8 Mr. Smith to issue a ruling --</p> <p>9 THE WITNESS: Yes. That front page certainly needs a</p> <p>10 ruling.</p> <p>11 MR. RASMUSSEN: I'd suggest that there's one reference</p> <p>12 to price. Couldn't we just black that out and admit the rest of</p> <p>13 the exhibit?</p> <p>14 MS. SEMMLER: Staff hasn't seen it yet and would like</p> <p>15 to weigh in as well.</p> <p>16 MR. SMITH: I tell you what, Mr. Goss. I'm going to</p> <p>17 sustain the objection based upon valuation to the exhibit on the</p> <p>18 basis that it talks about valuation in there. But perhaps what</p> <p>19 you might want to do is take some time and -- you're welcome to</p> <p>20 reoffer that page if you want to after deleting any references</p> <p>21 to land valuations.</p> <p>22 CHAIRMAN JOHNSON: That could probably be accomplished</p> <p>23 with a pen.</p> <p>24 THE WITNESS: I don't even see it.</p> <p>25 MR. SMITH: It's in one of the lowest -- down at the</p>
<p style="text-align: right;">966</p> <p>1 because I can't see it.</p> <p>2 THE WITNESS: This is a letter to my attorney from</p> <p>3 their land agent. It refers to asking about the moving and what</p> <p>4 he had told me on the telephone conversation. Am I getting in</p> <p>5 too deep here, Mr. Koenecke?</p> <p>6 MR. KOENECKE: Well, I'm just kind of -- what do you</p> <p>7 want to do, Mr. Smith? Are we letting in the rest of this</p> <p>8 exhibit, or where are we headed?</p> <p>9 MR. SMITH: The rest of the exhibit? I think if</p> <p>10 that's admissible, unless another party has an objection, we'll</p> <p>11 admit that. It doesn't have a number yet so --</p> <p>12 CHAIRMAN JOHNSON: Mr. Smith, I heard Mr. Goss</p> <p>13 indicate that he was fine having all of it except that portion</p> <p>14 Mr. Koenecke objected to entered into the record. Am I</p> <p>15 misstating that, Mr. Goss?</p> <p>16 THE WITNESS: No. The critical thing is what he threw</p> <p>17 out, really. I mean, he practically killed my summary. He's</p> <p>18 the attorney. You can see that. I should have testified to</p> <p>19 this and then let you object.</p> <p>20 MR. SMITH: Mr. Koenecke, do you have something to</p> <p>21 say?</p> <p>22 MR. KOENECKE: No. I'm maintaining my objection and</p> <p>23 waiting for a ruling.</p> <p>24 MR. SMITH: We don't have it. I can't look at it.</p> <p>25 THE WITNESS: Can I show it to the other Interveners?</p>	<p style="text-align: right;">968</p> <p>1 bottom.</p> <p>2 THE WITNESS: Oh, here it is. Oh, okay. Oh, yeah.</p> <p>3 (Witness marks on document)</p> <p>4 THE WITNESS: Yeah. Okay. I want to apologize for</p> <p>5 using an amount previously in the testimony. I'm sorry. I had</p> <p>6 not -- I'm sorry. I had not heard it was not able to be in when</p> <p>7 you began the hearing on this. I knew that's when the rules and</p> <p>8 regs were going to be put out, and I happened to have a doctor's</p> <p>9 appointment that morning.</p> <p>10 MR. SMITH: And, Mr. Goss, you're then reoffering that</p> <p>11 letter as a separate exhibit with that valuation portion of the</p> <p>12 document redacted?</p> <p>13 THE WITNESS: Yeah.</p> <p>14 MR. SMITH: Okay. I'm -- and then I'm going to ask</p> <p>15 again is there -- does Mr. Koenecke still have an objection?</p> <p>16 MR. KOENECKE: I know better than that, Mr. Smith.</p> <p>17 MR. SMITH: You might have an objection. I might</p> <p>18 overrule you, but you can have it.</p> <p>19 MR. KOENECKE: I'll let it go this time.</p> <p>20 MR. RASMUSSEN: No objection.</p> <p>21 MR. SMITH: We'll receive the letter. We'll have to</p> <p>22 do some marking and so forth, but we'll receive the letter with</p> <p>23 the valuation redacted. So all of those pieces of paper have</p> <p>24 now been received into evidence except for the number involving</p> <p>25 payment.</p>

<p style="text-align: right;">969</p> <p>1 CHAIRMAN JOHNSON: Mr. Smith, I don't have a hardcopy  2 of that one so I need to make sure I get one later. Can  3 somebody tell me the exhibit number?  4 MR. SMITH: Do you want to take a minute?  5 (Discussion off the record)  6 MR. SMITH: Okay. And the pictures, do you want to  7 just staple those together into one exhibit.  8 MS. AXTHELM: With 4? 4 is the letter that -- when  9 you looked at this I'm not for sure if this -- because when it  10 was handed it was just this with these three pages. This here  11 was not on I don't think that you -- did you see this part was  12 on there?  13 Okay. So this is all one then. And I can attach the  14 pictures to this all for Exhibit 4?  15 (Discussion off the record)  16 MR. SMITH: I'm not sure I've seen all of that stuff.  17 I don't know what was in the original packet there.  18 Brett, you're the only person that's seen it. Do you  19 want to look at it?  20 THE WITNESS: Going to have fun sorting this stuff out  21 when I get home.  22 MR. KOENECKE: Mr. Smith, is it your understanding  23 that the letter which has been redacted is and should be its own  24 separate exhibit?  25 MR. SMITH: Yes. I think it should.</p>	<p style="text-align: right;">971</p> <p>1 you for cross-examination then.  2 <u>CROSS-EXAMINATION</u>  3 <u>BY MR. KOENECKE:</u>  4 Q. Good afternoon, Mr. Goss. I just have one question. Is  5 your concern about the operating temperature of the pipeline  6 based on your understanding that it will operate at 167 degrees  7 Fahrenheit?  8 A. That was not my understanding. My statement was, as I  9 recall, was that the operation, if it's from 70 to 80 degrees  10 Celsius and operated at 75 degrees, that would be 167 degrees  11 Fahrenheit.  12 Q. So if the operating temperature was less than that, are you  13 still concerned?  14 A. I have no idea what it is. Yeah. I'm concerned -- once  15 you start warming the ground up it's going to dry it out and  16 change the vegetation that grows over it. Yes.  17 MR. KOENECKE: No further questions. Thank you.  18 MR. RASMUSSEN: No questions.  19 MR. SMITH: Mr. Hohn.  20 <u>CROSS-EXAMINATION</u>  21 <u>BY MR. HOHN:</u>  22 Q. Mr. Goss, you mentioned in section -- along Section 34  23 there's an abandoned section line on the west side; is that  24 correct?  25 A. Section 22 is a vacated section line.</p>
<p style="text-align: right;">970</p> <p>1 MR. KOENECKE: That which is attached to it.  2 MR. SMITH: Would be a separate exhibit, and I believe  3 we've already agreed that that's admissible. That can be  4 received. But I don't know what number it is, how it's been  5 marked.  6 And the pictures, do you want to staple those together  7 and call them 6.  8 Is that it as far as the exhibits that you --  9 THE WITNESS: I think so. I think so. There may  10 possibly be need for one other.  11 MR. SMITH: Okay. Well, I tell you what I'd like to  12 do is we've got to get moving here.  13 THE WITNESS: Yes. I'm going to try and sum it up as  14 quickly as I can, Mr. Smith.  15 MR. SMITH: Okay. Let's move along and do that.  16 THE WITNESS: Really and what these last letters that  17 have taken a lot of time indicate was correspondence in moving  18 off of Section 34 to get off of the native grass.  19 After a period of correspondence back and forth that  20 was approved under one condition: That I sign an easement on  21 22. I then looked up a word in the dictionary that reads to  22 coerce into something as by threat, and that word is blackmail.  23 I didn't feel that was a very proper operation in good faith.  24 That pretty well concludes what I have to say.  25 MR. SMITH: Thank you, sir. And then we'll now tender</p>	<p style="text-align: right;">972</p> <p>1 Q. Okay. I misheard. I'm sorry. Section 22 --  2 A. That's vacated. Not abandoned. Vacated.  3 Q. Vacated. I'm sorry. Was there ever a discussion between  4 you and TransCanada about possibly using that vacated section  5 line for the pipe?  6 A. Nope.  7 Q. You've had quite a bit of contact with TransCanada, numbers  8 of people, agents talking to you about this. What was -- how  9 would you classify -- I realize it's a number of people, but how  10 would you classify the landowner relations over all?  11 A. Well, I guess I was extremely disappointed that nobody ever  12 wanted to talk to me. I guess I live too far away from a  13 pipeline, but it was a half a mile from where I spent over half  14 my life.  15 I will say that I'm pleased with my contacts today with the  16 recognition from TransCanada as to what the situation is with  17 those being so cornered and so close you can't turn a tractor  18 around on what's left or you can't park a pickup.  19 Q. And then one last question, regarding the buffalo wallow,  20 that looks like a very large area. Approximately how many acres  21 does the wallow take up?  22 A. In that picture?  23 Q. Section 34.  24 A. Half an acre or less.  25 Q. And is that where the grasslands are?</p>

<p style="text-align: right;">973</p> <p>1 A. That L shape is the grassland on that particular quarter or</p> <p>2 section.</p> <p>3 Q. Is there much native grassland left in that county?</p> <p>4 A. No. I felt that with the exception of one other landowner</p> <p>5 in western Kingsbury -- outside western Kingsbury County, our</p> <p>6 operation contained a far higher percentage -- well, on a</p> <p>7 percentage basis we were number one in native grasses.</p> <p>8 Not in acreages but in percentage of our operation. We had</p> <p>9 more native grass, I would estimate, than anybody else in the</p> <p>10 western three townships that this pipeline goes through.</p> <p>11 Q. And then I have one last question, Mr. Goss. In addition</p> <p>12 to the sort of historic nature of native grass, original grass,</p> <p>13 are there practical issues related to native grass in terms of</p> <p>14 raising cattle in dry conditions?</p> <p>15 A. Oh, absolutely. After having moved from Kingsbury County</p> <p>16 to Butte County, native grasses, that's a short grass country.</p> <p>17 Let me tell you, we've got anything from tall blue stand to</p> <p>18 buffalo grass, western wheat grass in those native grasses. And</p> <p>19 when she dries out they call that buffalo grass because there's</p> <p>20 something there with nutrition that keeps them sheep and cows</p> <p>21 alive.</p> <p>22 MR. HOHN: Thank you.</p> <p>23 MR. SMITH: Staff? Questions?</p> <p>24 MS. SEMMLER: None. Thank you.</p> <p>25 MR. SMITH: Commissioners, questions of Mr. Goss?</p>	<p style="text-align: right;">975</p> <p>1 THE WITNESS: Right. Yep.</p> <p>2 MR. SMITH: And you're now under oath, and do you</p> <p>3 basically certify here today that the statements you made in</p> <p>4 your prefiled testimony are true?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. SMITH: And that if you were to go over the same</p> <p>7 exact thing today, you'd testify similarly?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. SMITH: Thank you. And then could you please</p> <p>10 briefly -- if you could. You know, I know brief is a relative</p> <p>11 term, but summarize your testimony if you could for the</p> <p>12 Commissioners.</p> <p>13 THE WITNESS: I could just go into additional, or do</p> <p>14 you want me to review any of the -- I don't really need to go</p> <p>15 back into the --</p> <p>16 MR. SMITH: Into what you filed?</p> <p>17 THE WITNESS: What I filed. I could just go on to --</p> <p>18 MR. SMITH: Sure. If you have other things to say.</p> <p>19 THE WITNESS: I do.</p> <p>20 MR. SMITH: Okay. Please proceed.</p> <p>21 CHAIRMAN JOHNSON: Thank you for your consideration on</p> <p>22 that front, Mr. Sibson.</p> <p>23 THE WITNESS: You've got it and you can review it and</p> <p>24 I've done it before.</p> <p>25 This is additional testimony, burden of proof 2 for</p>
<p style="text-align: right;">974</p> <p>1 Okay. Thank you, and I think you're excused,</p> <p>2 Mr. Goss. And you can step down.</p> <p>3 THE WITNESS: You're doing fine, all three of you.</p> <p>4 Thank you very much for this opportunity to horse you around</p> <p>5 this afternoon a little bit.</p> <p>6 MR. SMITH: Well, and I apologize for the sometimes</p> <p>7 cumbersomeness of dealing with some of this.</p> <p>8 THE WITNESS: I recognize this is all on record, but I</p> <p>9 wanted to get it right. Thank you.</p> <p>10 COMMISSIONER KOLBECK: You did a great job, Mr. Goss.</p> <p>11 THE WITNESS: Who said that?</p> <p>12 (The witness is excused)</p> <p>13 MR. SMITH: I'm trying to remember how long we've been</p> <p>14 at it here. Should we forge ahead?</p> <p>15 I think next on the list would be one of the Sibsons</p> <p>16 who I believe I recognize -- oh, no. That's not true. It</p> <p>17 doesn't matter to me.</p> <p>18 (The witness is sworn by the court reporter)</p> <p>19 MR. SMITH: Do you want to start out by introducing</p> <p>20 yourself, please.</p> <p>21 MR. SIBSON: Yeah. I'm Mike Sibson. I'm from Howard,</p> <p>22 South Dakota. I've got two quarters and an 80 affected by this</p> <p>23 pipeline in Section 33 in the south half of 28.</p> <p>24 MR. SMITH: And did you submit prefiled testimony in</p> <p>25 the case?</p>	<p style="text-align: right;">976</p> <p>1 social and economic and I've got 10 copies here for you guys to</p> <p>2 have -- each have one.</p> <p>3 I got three different ones. Do you want me to do all</p> <p>4 three at once or -- I got them numbered, 1, 2, 3.</p> <p>5 MR. SMITH: Why don't we do that. That way we can all</p> <p>6 have them, and we'll speed things along.</p> <p>7 I'm going to ask you now with respect to just your</p> <p>8 prefiled, we'll have that labeled Sibson 1. Do you wish to</p> <p>9 offer that into evidence at this time then?</p> <p>10 THE WITNESS: Yes.</p> <p>11 MR. SMITH: Objection anyone?</p> <p>12 MR. KOENECKE: We'd ask that the first page be</p> <p>13 redacted. It contains financial information pursuant to the</p> <p>14 Motion in Limine conversation previously.</p> <p>15 MR. SMITH: Is that the prefiled?</p> <p>16 MR. KOENECKE: Yes.</p> <p>17 MR. SMITH: With that specific valuation information</p> <p>18 redacted, does your objection go away?</p> <p>19 MR. KOENECKE: Yes.</p> <p>20 MR. SMITH: Mr. Sibson, I think we're going to do</p> <p>21 that. Is that fine with you?</p> <p>22 THE WITNESS: Yeah. If that's what you got to do.</p> <p>23 MR. SMITH: It's the ruling we've made, right or</p> <p>24 wrong. Maybe we're wrong, but that's what we've done. So I</p> <p>25 think to move this along, we'll do that.</p>

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1 Thank you. Any other -- any objections to number 1?

2 Okay. Your Exhibit 1, your prefiled, is admitted. And then why

3 don't you get started and you can explain what your other things

4 are and we'll take it from there.

5 THE WITNESS: Okay. My first one's on the social and

6 economic. We gave the attached map to -- we gave the attached

7 map to at the time our land agent, Pam Bruce, on 6-26-07. The

8 map shows the future expansion plans we have been working on.

9 Pam told us that TransCanada had to reroute because they could

10 not limit our future expansion. TransCanada never contacted us

11 about the plans.

12 When our second land agent visited us on 7-30-07 the

13 map we had given Pam was not in the file. Clark told us that he

14 was our new agent and that Pam was moved to Nebraska.

15 We are wondering why this foreign company was not

16 willing to work with us about our plans, and what happened to

17 the map that we gave to Pam Bruce.

18 And on the wetlands, additional testimony on wetlands,

19 the attached map is from Miner County Conservation Office. The

20 map showed our home section and all the wetlands. The black

21 line shows how the proposed pipeline route goes through our

22 land. All the darker or the black areas are wetlands. And the

23 blue circles mark the dugouts.

24 All the water that flows to the land on that section

25 exits the same area that the proposed pipeline exits.

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1 As a landowner and farmers we love our land. We do

2 not farm fence row to fence row. We have protected the many

3 wetlands on our land. We have close to 200 acres of native

4 grass. We do not want it damaged. We are stewards of the land,

5 and we will do what we can to protect the native grasses.

6 And then the last additional testimony is I am giving

7 additional testimony to burden of proof 2, social and economic.

8 The proposed pipeline cuts diagonal through our home section.

9 We background feeder cattle being the main source of income.

10 The cattle graze on native grass through the summer and are sold

11 as yearlings in the fall.

12 We figure construction across our property could be

13 from 8 to 12 weeks without weather delays. The proposed

14 pipeline will devastate our grass rotation plan we have used for

15 years. We feel that TransCanada should pay us for loss of

16 income as we will not be able to graze the cattle as we usually

17 have done for years. We told this concern to the land agent,

18 Clark Cooney (phonetic). His response was they probably will

19 not pay that.

20 We listened to Buster Gray's testimony by internet.

21 His response to fences and livestock are confusing during the

22 construction period. We feel cattle, and fencing issues need to

23 be addressed. We'll be willing to talk to Buster Gray and get

24 more details.

25 In my prefiled testimony we have already mentioned how

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1 important water and dugouts are to my cattle operation. We told

2 my banker about the proposed pipeline. His response was we

3 would be better off to sell and move on if the proposed pipeline

4 came through our property.

5 Why should we do that when we have been on this

6 section for 30 years? We do not want this pipeline to cross our

7 land. If we are forced to accept this pipeline, we have some

8 conditions that we would like the PUC to consider.

9 Number one, one pipe only. The pipe should be buried

10 deeper and built heavier. 2, a 10-foot easement area instead of

11 50 feet. Number 3, the easement area should not be perpetual.

12 4, we feel that landowners should get a yearly fee. 5, the

13 landowners are only protecting their land. We feel TransCanada

14 should pay all attorney fees. We feel TransCanada needs to put

15 an end game plan in place now before the permit can be approved.

16 In closing, after listening to other affected

17 landowners, we all have the same concerns and issues about this

18 pipeline. As we see it, we are all in this together. We have

19 everything to lose and nothing to gain. Before this TransCanada

20 nightmare we were living the American dream. We had life,

21 liberty, and the pursuit of happiness. Now this proposed

22 pipeline we feel these rights have been taken away.

23 And that concludes my thing.

24 MR. SMITH: First of all, the Exhibits 2, 3, and 4, is

25 there an objection from anyone?

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1 MR. KOENECKE: No objection.

2 MR. SMITH: Hearing none, your exhibits are admitted

3 into evidence. And at this point I'm going to turn you over for

4 cross-examination -- questions from the parties, if that's okay.

5 THE WITNESS: That's fine.

6 MR. KOENECKE: Mr. Sibson, thank you for coming today.

7 I have no questions for you.

8 MR. RASMUSSEN: No questions.

9 CROSS-EXAMINATION

10 BY MR. HOHN:

11 Q. Mr. Sibson, I have a couple questions for you. On page 3,

12 the last page of your testimony where your signature is, top of

13 the page, if I could summarize, it says the agent told you it's

14 a done deal and all land easements will be done by October,

15 November.

16 So why are we all here testifying when it's a done deal?

17 What do you mean by that statement?

18 A. Well, that's what -- she stated that we -- anything that

19 I've asked she was saying -- like I wanted a yearly fee. And

20 she says you won't get it. The answer will be no. And I said,

21 well, why are they saying no, and she said they don't have to

22 give you a reason. And she said this is a done deal already so

23 you just as well sign the easement.

24 Q. In terms of the done deal, done deal meaning what? The

25 hearings hadn't been held. What was done about it?

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1 A. That it's going to be approved, and it's going to come  
2 through my property. No use fighting it. It's a done deal.  
3 Q. On the second page of your testimony, fifth paragraph down,  
4 you're referring to fuel storage; correct? Where it starts out  
5 my local fuel dealer. Maybe I'm on the wrong page.  
6 A. No. You might not be. Is it the second or third one?  
7 Q. It's the one, two, three, four -- I'm counting five. It's  
8 the second page and then the fifth paragraph down.  
9 A. Oh, okay. I've got it.  
10 Q. Do you see that there?  
11 A. Yeah.  
12 Q. What's the question there regarding secondary containment?  
13 Are you talking about secondary containment around the pipe?  
14 A. In the event of a leak. And I would just as soon -- that's  
15 probably where I thought my wetlands should be protected by  
16 federal law but yet I think they're going to be used for the  
17 secondary containment in the case of an oil leak is the way I  
18 look at it.  
19 Q. By secondary containment and your local fuel dealer, you're  
20 referring to the requirement --  
21 A. That he has to abide by it and have that secondary  
22 containment in place.  
23 Q. In case the fuel --  
24 A. The fuel tank would leak there's another containment area  
25 so it doesn't --

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1 Q. I understand now. Thank you. I don't know if you're at  
2 liberty to say, but could you give us the name of the banker  
3 that expressed concern?  
4 A. Fred Smith, Fulton State Bank. I just thought I'd run that  
5 through him, and he just thought rather than put up with what I  
6 would have to deal with and living that close to the pipeline,  
7 he thought it would be in my best interest just to move.  
8 And that wasn't kind of the advice I was wanting to hear.  
9 How can a foreign country -- I've been living there 30 years.  
10 How can a foreign country tell me out of the way, we're coming  
11 through? I was there first.  
12 Q. In the contact you've had with land agents, have you ever  
13 had a reason or have you contacted the Public Utilities  
14 Commission regarding a landowner -- or land agent's activity and  
15 complained or filed a complaint?  
16 A. Yes, we have, but my wife Sue will follow up on that.  
17 MR. HOHN: Okay. I have no further questions.  
18 MR. SMITH: Staff questions?  
19 MS. SEMMLER: None. Thanks.  
20 MR. SMITH: Commissioners, do you have questions of  
21 Mr. Sibson?  
22 CHAIRMAN JOHNSON: Thanks for being here, Mr. Sibson.  
23 You've mentioned I think a number of concerns about eminent  
24 domain, and I just want to make sure you know that's not a  
25 subject to this Commission.

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1 THE WITNESS: That was done prior to this, and we  
2 figured we'd go in on what we knew we could.  
3 CHAIRMAN JOHNSON: Well, even in your oral testimony  
4 you've expressed some frustration and I certainly understand why  
5 you'd have that frustration and you'll have presumably a --  
6 THE WITNESS: Day in court.  
7 CHAIRMAN JOHNSON: Additional recourse for that.  
8 That's all I have.  
9 MR. SMITH: Commissioner Kolbeck.  
10 COMMISSIONER KOLBECK: Mr. Sibson, could you just tell  
11 me where from -- I'm trying to keep track of everyone on this  
12 exhibit.  
13 THE WITNESS: It's 360 on that map, I believe. The  
14 number 360.  
15 COMMISSIONER KOLBECK: Okay. Mile post 360?  
16 THE WITNESS: Right.  
17 COMMISSIONER KOLBECK: Okay. And that's your --  
18 THE WITNESS: Right. There's 80 acres to the north,  
19 and then two quarters in Section 33 is the two quarters.  
20 COMMISSIONER KOLBECK: Okay.  
21 THE WITNESS: But I do have -- that map shows the  
22 water, how it tracks. I own that whole section plus the 80.  
23 But anywhere in that -- where the oil line crosses, if it should  
24 leak anywhere, even the high ground or wherever, it can get in  
25 and move through all of that wetland.

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1 And all of that water goes in to the south part where  
2 the line exits. And there's one single culvert there. So that  
3 kind of restricts water, but it lets it go at a slow pace. So  
4 basically that all stays flooded. And in time it eventually  
5 leaks out. But in case of a leak, that oil's going to all be  
6 channeling to that one spot. And it would exit on to the  
7 neighbor's property to the south.  
8 But it's pretty much a waterway tracks all through  
9 that. And it basically goes south. Wherever it flows, it will  
10 eventually head out and exit that to the south.  
11 COMMISSIONER KOLBECK: And are those production areas,  
12 are they -- is that through the State? Is that like an open  
13 hunting?  
14 THE WITNESS: The ones that are close to me up to the  
15 north?  
16 COMMISSIONER KOLBECK: There's one north and one  
17 south.  
18 THE WITNESS: Yeah. It's kind of funny how the line  
19 manages to miss that, but it nails me. They don't want it on  
20 their State game refuge, but yet they can make me take the line.  
21 And I've got a lot more wildlife, and I do a lot of stuff for  
22 wildlife. I've got probably more pheasants than that federal  
23 one does.  
24 I've even had three nests of tame geese nested on my  
25 dugouts with cattle in them. The cattle don't affect the nest.

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1 The mothers keep the cattle away from the nest, but yet the  
2 cattle are there to keep the predators away from the nest. And  
3 I think the geese figured that one out.  
4 COMMISSIONER KOLBECK: How far is your home from the  
5 line?  
6 THE WITNESS: It says farm -- I'm just estimating it's  
7 a quarter mile or less. Or an eighth to a quarter mile would be  
8 my estimation.  
9 COMMISSIONER KOLBECK: To the west or the east?  
10 THE WITNESS: From the -- the line will be east of the  
11 farmstead.  
12 COMMISSIONER KOLBECK: Oh, okay. Okay. That's what I  
13 needed. Thank you.  
14 MR. SMITH: Other Commissioner questions? I just have  
15 one really quick question. And I think it's Exhibit No. 4.  
16 It's the -- this one here, the one that's got more --  
17 THE WITNESS: Got my name on the top.  
18 MR. SMITH: Yeah. And on number 6 you feel  
19 TransCanada needs to put an end game in place now. And I was  
20 just wondering what you mean by that phrase, "an end game."  
21 THE WITNESS: Well, the way I understand the end game  
22 would be when the line is no longer in use and will be abandoned  
23 what's going to happen to it? Who's going to be responsible to  
24 remove the pipe? Is it just going to be left and when it's left  
25 the pipe will eventually collapse and there will be holes.

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1 I'm just wondering. They need to have an end game.  
2 And who's going to pay the price to remove the line off the  
3 property once the line's no longer used?  
4 MR. SMITH: That's what I thought you meant, but I  
5 just wanted to clarify and make sure that's what you were  
6 talking about there. I believe you're done and can be excused  
7 then.  
8 THE WITNESS: Thank you.  
9 MR. SMITH: Thank you very much for coming today.  
10 (The witness is excused)  
11 MR. SMITH: Mrs. Sibson, are you ready to go at this  
12 point?  
13 (The witness is sworn by the court reporter)  
14 MRS. SIBSON: Good afternoon. Basically how --  
15 MR. SMITH: Before you get going, please, you need to  
16 identify yourself so we have you -- so we know who you are when  
17 we read the transcript. Thank you.  
18 MRS. SIBSON: I'm Susan Sibson. I'm from Howard,  
19 South Dakota. I'm married to Mike. We live in Miner County  
20 Roswell Township. The proposed pipeline will track through an  
21 80 and two quarters of our land.  
22 What I have done today is similar to Mike's testimony  
23 that we have additional testimony. And I have 10 copies of  
24 that. So we'll just go ahead and --  
25 MR. SMITH: Please do.

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1 MR. KOENECKE: I don't have prefiled testimony for  
2 Mrs. Sibson. Am I missing --  
3 MR. SMITH: I think it was filed by both of them.  
4 MRS. SIBSON: Mike just had his name on the bottom, I  
5 think. I did all the work, sir. Believe me.  
6 COMMISSIONER KOLBECK: So what's new? Is that what  
7 you're saying?  
8 MRS. SIBSON: No. No.  
9 If you don't want to mix up the testimony for me, my  
10 husband can come up here and give it. If that's what you want  
11 to do, that's fine.  
12 CHAIRMAN JOHNSON: I don't think anybody's said that.  
13 Nobody's normally objected. They might not. If they were  
14 missing testimony, they wanted to make sure they had it handy.  
15 MRS. SIBSON: When I sent the prefiled testimony in, I  
16 did not add my name to the bottom of it, which I should have.  
17 MR. SMITH: Did TransCanada have an objection to  
18 her -- I know the testimony original said Mike Sibson. We've  
19 had a lot of contact with Mrs. Sibson. So I guess in my mind I  
20 understood the testimony to be on behalf of you both.  
21 MRS. SIBSON: Excuse me, Mr. Smith. But I think when  
22 I sent in -- I can't remember what paper it was. Both of our  
23 names were on there. Not just in the -- I can't remember what  
24 you called --  
25 MR. SMITH: The Application for party status?

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1 MRS. SIBSON: There you go. Uh-huh.  
2 CHAIRMAN JOHNSON: For those on the internet, you're  
3 still on line. We're just pausing for a moment while the  
4 parties review the testimony that was not prefiled by  
5 Ms. Sibson, and people are reviewing to see if they have any  
6 objections.  
7 MR. KOENECKE: Mr. Smith, we object to Mrs. Sibson in  
8 this portion of the hearing. Her name isn't anywhere on the  
9 prefiled documents that she says she drafted. We've had no  
10 notice of this, and I guess we're not willing to open the door  
11 to people testifying in the evidentiary portion of the hearing  
12 without people having prefiled testimony. We're simply not  
13 willing to do that.  
14 MR. SMITH: Do you have a position on that,  
15 Mrs. Sibson?  
16 MRS. SIBSON: I would say that I failed to put my name  
17 on the prefiled testimony. And all we need to do is have Mike  
18 come up here and read this then.  
19 MR. SMITH: Commissioners, do you have a -- I mean,  
20 technically speaking, we did require. I guess you know that.  
21 MRS. SIBSON: Yes, I do.  
22 MR. SMITH: Because we've had enough contact over the  
23 last few months, I guess I know you guys intended for that to be  
24 on behalf of you both. And I never even noticed before it was  
25 just his name on there.



<p style="text-align: right;">989</p> <p>1 MRS. SIBSON: Actually I just noticed that this</p> <p>2 morning when I was putting everything together in the file to</p> <p>3 come out.</p> <p>4 MR. KOENECKE: Well, Mr. Smith, it says, Testimony by</p> <p>5 Mike Sibson at the top, and at the bottom it's signed by</p> <p>6 Mike Sibson. I'm not willing to open that door. You'll have to</p> <p>7 do that over my objections.</p> <p>8 I'm sorry, Mrs. Sibson.</p> <p>9 MRS. SIBSON: That's fine, sir. That's fine. So then</p> <p>10 can Mike come up here and testify to this then? To me it didn't</p> <p>11 matter. I guess we've done everything together. We've been</p> <p>12 married 30 years, that I just thought we were splitting it up to</p> <p>13 help each other out so --</p> <p>14 CHAIRMAN JOHNSON: Mr. Smith, I don't want to bump in.</p> <p>15 You haven't made a ruling yet. And I certainly don't intend to</p> <p>16 overrule something that hasn't been ruled on yet.</p> <p>17 To me I just want to make it clear, I think you've got</p> <p>18 potentially three options. One option may be Mr. Smith may</p> <p>19 overrule the objection. He may allow you to give the testimony</p> <p>20 on your own behalf. I don't know what he's going to do.</p> <p>21 Second, even if he abstains the objection, yeah, you could have</p> <p>22 Tim (sic) come read it.</p> <p>23 MRS. SIBSON: Mike.</p> <p>24 CHAIRMAN JOHNSON: Mike. Sorry. That's right. Even</p> <p>25 if you didn't want to do that, at 7 o'clock tonight you could</p>	<p style="text-align: right;">991</p> <p>1 MRS. SIBSON: That's fine. That's fine.</p> <p>2 MR. SMITH: And I apologize for that.</p> <p>3 MRS. SIBSON: No. Don't need to.</p> <p>4 MR. SMITH: I'm going to sustain the objection. And</p> <p>5 as Commissioner Johnson said, because you won't be able to</p> <p>6 testify here, if you want to offer your thoughts in the public</p> <p>7 comment period tonight, you're free to do that.</p> <p>8 MRS. SIBSON: Sure. That's fine.</p> <p>9 MR. SMITH: And, again, I know it's kind of</p> <p>10 hypertechnical.</p> <p>11 MRS. SIBSON: That's fine.</p> <p>12 MR. SMITH: Thanks. Mr. Sibson, then you're still</p> <p>13 under oath.</p> <p>14 THE WITNESS: I need my eyes.</p> <p>15 Okay. The first one is an attached contact summary</p> <p>16 with TransCanada land agent. We did not agree with what the</p> <p>17 report said, which is attached. This was July 30, 2007. Clark</p> <p>18 did not give his last name. Nor did he have a business card.</p> <p>19 We asked many times for a card. Finally he agreed to e-mail or</p> <p>20 stop one off.</p> <p>21 He said he was -- he said he was here to discuss</p> <p>22 issues. When we asked him what the issues he had little to say.</p> <p>23 We felt he did not know much. Buster Gray is the head engineer,</p> <p>24 and he said he had no idea who Buster was. We did not indicate</p> <p>25 that he was lying but he was misinformed.</p>
<p style="text-align: right;">990</p> <p>1 have an opportunity to provide your thoughts at the public</p> <p>2 comment hearing tonight. I believe we're having that</p> <p>3 transcribed, and I believe we are taking information from</p> <p>4 people.</p> <p>5 Now you wouldn't have the glorious luxury of being</p> <p>6 cross-examined. And you wouldn't be under oath. But I just</p> <p>7 want you to think before Mr. Smith does his ruling that you have</p> <p>8 some other options.</p> <p>9 MRS. SIBSON: Could I have a minute to speak to my</p> <p>10 husband about this? Thank you.</p> <p>11 (Pause)</p> <p>12 MRS. SIBSON: My husband, Mike, said that he will do</p> <p>13 this testimony then.</p> <p>14 CHAIRMAN JOHNSON: Well, let's see what Mr. Smith's</p> <p>15 ruling is before we --</p> <p>16 MRS. SIBSON: Sure. I'm sorry.</p> <p>17 COMMISSIONER KOLBECK: It would be -- I guess if you</p> <p>18 want my opinion, Mr. Smith, I think that she's on the verge of</p> <p>19 making the correct choice.</p> <p>20 MRS. SIBSON: I was thinking that all day today, he</p> <p>21 should be doing all of this.</p> <p>22 MR. SMITH: I guess I -- you know, I'm kind of torn on</p> <p>23 it because I know you've been involved. I know that because of</p> <p>24 the various contacts that have been. But I guess to technically</p> <p>25 keep it within our order and the rules --</p>	<p style="text-align: right;">992</p> <p>1 The policy maybe is in place, but employees are not</p> <p>2 following policy. We asked about having our attorney fees paid</p> <p>3 for by TransCanada. Clark did not mention this in his summary.</p> <p>4 In addition, he failed to mention he agreed to us and would</p> <p>5 fight this project if it were on his land. However, we were not</p> <p>6 to say he said that as he could lose his job.</p> <p>7 We have not been in contact with Canadian landowners.</p> <p>8 We have checked websites from Canada. Clark failed to show us</p> <p>9 where in the easement that we would be held harmless. We never</p> <p>10 even looked at the easement he had in his file on this day.</p> <p>11 Clark needs to use a dictionary to find the correct spelling of</p> <p>12 eminent domain. Sorry. Had to use that again.</p> <p>13 Number 2, on September 7, '07, 11:57 a.m.</p> <p>14 Clark Cooney, land agent for TransCanada, was on our farm near</p> <p>15 Howard. We asked him how many landowners sign their easements</p> <p>16 in Miner County. Clark did tell us some names. I asked Clark</p> <p>17 if Dorothy Schroeder signed her easement. He said, No. He</p> <p>18 said, She has two tenants. One signed, and the other one must</p> <p>19 have threatened her not to sign.</p> <p>20 I then called Dick Burhardt (phonetic), tenant, on my</p> <p>21 cell phone and told him what Clark said. He wanted to talk to</p> <p>22 Clark. Dick told Clark he had never threatened Dorothy.</p> <p>23 2:51 p.m., I called Timothy Slorby, Clark's</p> <p>24 supervisor. He was rude and very loud. He was not a</p> <p>25 professional at all. I told him Clark could lose his job for</p>

<p style="text-align: right;">993</p> <p>1 saying what he did about Dick Burhardt. Mr. Slorby went off on</p> <p>2 a big speech about Lillian saying things about the land agents</p> <p>3 and America's need for oil. Mr. -- sorry if I keep pronouncing</p> <p>4 his name wrong -- Slorby gave me Don Ellis's phone number and</p> <p>5 wanted me to call him. I did. He was on conference call</p> <p>6 according to Beth Lee. He said he would call me back. He did</p> <p>7 not return my call. Denny Needlham (sic) called instead. I</p> <p>8 asked to know what happened with Clark, and his reply was it was</p> <p>9 up to state law and it was confidential. He said that Clark</p> <p>10 made a mistake. He also indicated we would be getting a new</p> <p>11 land agent.</p> <p>12 September 11, 2007, I called Denny Needlham to ask for</p> <p>13 an update about the land agent. He returned my call. He said</p> <p>14 they did an investigation and took no action. Clark will not be</p> <p>15 our agent.</p> <p>16 And the other additional testimony is September 7,</p> <p>17 2007. Our appointment was at 10 o'clock with Clark Cooney. I</p> <p>18 was already talking with him when Sue joined the conversation.</p> <p>19 I said to her that Clark told him that the PUC had given verbal</p> <p>20 approval to the pipeline. She asked Clark to state that to her.</p> <p>21 He did.</p> <p>22 Once again, I asked -- she asked him to repeat the</p> <p>23 statement, and he did. Clark had the easement in one hand as he</p> <p>24 made the statement to put the easement on the trunk of the</p> <p>25 car -- he put it on the trunk of the car. I felt that he was</p>	<p style="text-align: right;">995</p> <p>1 questions if the parties here have questions of you.</p> <p>2 Mr. Koenecke.</p> <p>3 <u>CROSS-EXAMINATION</u></p> <p>4 <u>BY MR. KOENECKE:</u></p> <p>5 Q. Good afternoon, Mr. Sibson, Mrs. Sibson. Thank you for</p> <p>6 coming. I'm looking at the second page of what's been marked as</p> <p>7 Exhibit 5, Keystone Pipeline Project page 1 it says at the top.</p> <p>8 Have you got that there?</p> <p>9 A. Yes.</p> <p>10 Q. I'm trying to remember. It seems to me that your testimony</p> <p>11 was there were some things that were wrong in this document. Am</p> <p>12 I right?</p> <p>13 A. I believe it was things that he failed to put in this</p> <p>14 document.</p> <p>15 Q. But is what's in here then is right?</p> <p>16 A. Oh, this was our take on what happened that day. This is</p> <p>17 what he put happened that day.</p> <p>18 Q. Very good. So are you telling me that the second sentence</p> <p>19 after it says, Contact Summary, that didn't happen?</p> <p>20 A. On what?</p> <p>21 Q. Do you see where it says, I was told that TransCanada</p> <p>22 Keystone could "go to hell" and that "we will fight this</p> <p>23 pipeline to the death?" The reasons are as follows?</p> <p>24 Is that wrong or --</p> <p>25 A. No. I did tell him to go to hell, and I said we'll fight</p>
<p style="text-align: right;">994</p> <p>1 really pushing us to sign. I went in the house and called the</p> <p>2 PUC office. Bob Knadle -- sorry about that.</p> <p>3 MR. GERDES: Nobody can pronounce it.</p> <p>4 THE WITNESS: That's good to know. Was the person I</p> <p>5 spoke to. The attached e-mail explains that Mr. Knadle said to</p> <p>6 the land agent. Later I asked Clark who he had gotten his</p> <p>7 information from. He said Tom Slorby. I asked him, Whom did</p> <p>8 Mr. Slorby get his information from? He said, Don Ellis.</p> <p>9 That concludes my -- our testimony.</p> <p>10 (Discussion off the record)</p> <p>11 MR. SMITH: Okay. At this time, Mr. Sibson, would you</p> <p>12 want to offer your Exhibit 5, 6, 7?</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. SMITH: Is there an objection?</p> <p>15 MR. KOENECKE: No objection.</p> <p>16 MR. RASMUSSEN: No objection.</p> <p>17 MR. HOHN: No objection.</p> <p>18 MR. SMITH: We'll receive those into evidence then. I</p> <p>19 don't know if you had any additional comments. Otherwise, we'll</p> <p>20 tender you for questions regarding these matters. I think we</p> <p>21 can pretty much get the drift from --</p> <p>22 THE WITNESS: How we've been treated not fairly.</p> <p>23 That's our main point. We just ask that we be treated fairly</p> <p>24 for once. That's all we ask.</p> <p>25 MR. SMITH: Okay. I'm going to allow you to answer</p>	<p style="text-align: right;">996</p> <p>1 this to the death. I did say that.</p> <p>2 Q. Very good. I just wanted to know if that was right. So do</p> <p>3 you remember your previous testimony before you came back up to</p> <p>4 the stand?</p> <p>5 A. Pardon?</p> <p>6 Q. Do you remember your previous testimony before you came</p> <p>7 back to the stand?</p> <p>8 A. Yeah.</p> <p>9 Q. You testified, didn't you, that there were six conditions</p> <p>10 that you wanted the Commission to put --</p> <p>11 A. Oh, yes. Yes.</p> <p>12 Q. So I guess I'm left wondering which is it? Can TransCanada</p> <p>13 just go to hell and you'll fight to the death, or with these</p> <p>14 conditions is it then acceptable?</p> <p>15 I'm just wondering which it is.</p> <p>16 A. That is what happened then. This is now.</p> <p>17 Q. What's now? What's happened since then, I guess is what</p> <p>18 I'm asking.</p> <p>19 A. I don't understand where you're getting at.</p> <p>20 Q. How come you felt TransCanada could go to hell and fight</p> <p>21 the pipeline to the death in September --</p> <p>22 A. That's because I was on to my land agent's con game. And I</p> <p>23 told Clark right off the start that he's got a job to do and</p> <p>24 I've got land to protect and anything I say to him is nothing</p> <p>25 personal. And he understood that. And we talked quite fine</p>

<p style="text-align: right;">997</p> <p>1 about this.</p> <p>2 Q. Who's we?</p> <p>3 A. Me and him.</p> <p>4 Q. Clark?</p> <p>5 A. Right.</p> <p>6 Q. But now you've got a new land agent; right?</p> <p>7 A. I guess.</p> <p>8 Q. When is the last time --</p> <p>9 A. We've never talked to him. He's never contacted us.</p> <p>10 Q. What's the last contact you've had with TransCanada?</p> <p>11 A. September 7. And Clark was no longer our agent up to that</p> <p>12 day -- after that day.</p> <p>13 Q. So have you been notified that you have a new agent?</p> <p>14 A. Only by Denny Needham.</p> <p>15 Q. And you have not heard from whoever that person is?</p> <p>16 A. No.</p> <p>17 Q. Okay. Very good. I just want to correct the record. I'm</p> <p>18 looking at Sibson 6 I have marked. You had -- did you see where</p> <p>19 it says September 11, about the middle of the page?</p> <p>20 A. Yes.</p> <p>21 Q. If I remember correctly, you recited that he said they did</p> <p>22 an investigation and took no action. And is this correct as</p> <p>23 it's in writing here, that action was taken, that Clark would</p> <p>24 not be your land agent? It's correct as it is on the sheet and</p> <p>25 it's not correct as you recited it, if you recited it according</p>	<p style="text-align: right;">999</p> <p>1 verbal approval that we know of and that he shouldn't be saying</p> <p>2 that. Because I know you're trying to -- I told him he was</p> <p>3 really good at his job and that he's trying to B.S. us into</p> <p>4 signing this easement. And he's very, very good at it. But I'm</p> <p>5 a master at reading B.S. is what I told him back. And he knew</p> <p>6 we were onto him.</p> <p>7 Q. And so while you and Mr. Cooney were continuing to talk</p> <p>8 your wife went in the house and called the PUC?</p> <p>9 A. Yes. Yeah. And then she brought the phone out and told</p> <p>10 him, Would you repeat this to the PUC? And he said, Sure. And</p> <p>11 he sounded awful convincing that he believed what he was saying.</p> <p>12 I mean, it was very believable.</p> <p>13 But I don't know myself who's telling the truth and who</p> <p>14 isn't. I'm confused myself on that.</p> <p>15 Q. Looking to the second page of that testimony, this</p> <p>16 apparently happened sometime in the morning at 10. And then</p> <p>17 looking at the second page --</p> <p>18 MR. SMITH: Curt, are we doing anything here besides</p> <p>19 just regurgitating what's on the paper --</p> <p>20 MR. HOHN: No. I have a question. Second page.</p> <p>21 Q. So according to this e-mail response, you called in this</p> <p>22 gentleman who's an agent of TransCanada, talked to the PUC and</p> <p>23 according to that e-mail your call came in at 10:10 and he sent</p> <p>24 this e-mail back at 10:39; is that correct?</p> <p>25 A. Yes. Yes.</p>
<p style="text-align: right;">998</p> <p>1 to my recollection.</p> <p>2 A. Correct.</p> <p>3 MR. KOENECKE: I've got nothing further. Thank you</p> <p>4 for coming today.</p> <p>5 MR. SMITH: Mr. Rasmussen.</p> <p>6 MR. RASMUSSEN: No questions.</p> <p>7 MR. SMITH: Mr. Hohn.</p> <p>8 <u>CROSS-EXAMINATION</u></p> <p>9 <u>BY MR. HOHN:</u></p> <p>10 Q. Mr. Sibson, I'm looking at Exhibit 7.</p> <p>11 A. Yes.</p> <p>12 Q. And this relates to the issue of September 7; correct? In</p> <p>13 reading this it appears that your land agent, Mr. Cooney, had</p> <p>14 stated the PUC had already given verbal approval to the</p> <p>15 pipeline?</p> <p>16 A. Yes.</p> <p>17 Q. And was he doing this at a time when you felt he was trying</p> <p>18 to negotiate with you?</p> <p>19 A. Yeah. He said it right away as he got out of his pickup</p> <p>20 with the easement in his hand figuring that maybe would be what</p> <p>21 it would take to get us to sign.</p> <p>22 Q. And in the exchange -- I realize this is a short summary of</p> <p>23 it, but in the exchange did you challenge him on that? Did you</p> <p>24 question him on that?</p> <p>25 A. I basically told him that we know the PUC did not give</p>	<p style="text-align: right;">1000</p> <p>1 Q. I can see that the e-mail was copied to others at the PUC.</p> <p>2 Was this ever conveyed in writing to TransCanada as far as you</p> <p>3 know?</p> <p>4 A. I have no idea.</p> <p>5 Q. Did you send this written information to TransCanada?</p> <p>6 A. No.</p> <p>7 MR. HOHN: Okay. Thank you.</p> <p>8 MR. SMITH: Other questions? Staff?</p> <p>9 MS. SEMMLER: I have a question.</p> <p>10 <u>CROSS-EXAMINATION</u></p> <p>11 <u>BY MS. SEMMLER:</u></p> <p>12 Q. Do you have any personal knowledge of the correspondence</p> <p>13 that staff had with those at TransCanada regarding your</p> <p>14 correspondence, among other concerns, regarding land agents?</p> <p>15 A. Yes.</p> <p>16 Q. Please describe those, that personal knowledge you have of</p> <p>17 the conversations that staff had with TransCanada.</p> <p>18 A. It's the letter back from TransCanada from October 11, 2007</p> <p>19 to the PUC.</p> <p>20 Q. So it sounds as if you got -- you received confirmation</p> <p>21 from TransCanada that staff did communicate regarding your</p> <p>22 concern?</p> <p>23 A. No. Not ours personally.</p> <p>24 Q. So you do have no knowledge of the conversation that staff</p> <p>25 may have had with TransCanada regarding your concern?</p>

<p style="text-align: right;">1001</p> <p>1 A. Yes.</p> <p>2 MR. SMITH: No further questions? Are there</p> <p>3 Commissioner questions of Mr. Sibson about this?</p> <p>4 MR. SMITH: I don't have any, and so I think you guys</p> <p>5 are excused. And thanks a lot. And, again, I apologize for the</p> <p>6 confusion.</p> <p>7 THE WITNESS: Not a problem. That's okay. Thank you</p> <p>8 very much.</p> <p>9 (The witness is excused)</p> <p>10 MR. SMITH: What's the pleasure of the Commission now?</p> <p>11 It's 5 o'clock. We still have the two gentlemen from the State</p> <p>12 back there.</p> <p>13 Do you want to proceed with them?</p> <p>14 CHAIRMAN JOHNSON: I think to be fair to everyone, we</p> <p>15 wouldn't want to start a dinner break much later than 5:30. We</p> <p>16 need to be back and ready to go at 7.</p> <p>17 So that being said, I don't have a clue what the</p> <p>18 attorneys and pro se Interveners have planned for questions. If</p> <p>19 we feel like we could move expeditiously through, we should get</p> <p>20 them started, or maybe we just get them started and break at</p> <p>21 5:30.</p> <p>22 MR. SMITH: And start in the morning?</p> <p>23 CHAIRMAN JOHNSON: Sure would be nice.</p> <p>24 (Discussion off the record)</p> <p>25 CHAIRMAN JOHNSON: Mr. Smith, we're so far behind</p>	<p style="text-align: right;">1003</p> <p>1 MR. SMITH: It's gone both ways. I've seen things get</p> <p>2 over way before we thought, and sometimes they don't go that</p> <p>3 way.</p> <p>4 (The witness is sworn by the court reporter)</p> <p>5 <u>DIRECT EXAMINATION</u></p> <p>6 <u>BY MS. GIEDD:</u></p> <p>7 Q. Paige, would you state your name for the record, please.</p> <p>8 A. Paige Hoskinson Olson.</p> <p>9 Q. Who do you work for?</p> <p>10 A. I work for the South Dakota State Historical Society.</p> <p>11 Q. Have you ever testified before?</p> <p>12 A. No.</p> <p>13 Q. Are you nervous?</p> <p>14 A. I am.</p> <p>15 Q. Well, if I ask you something you don't understand, just ask</p> <p>16 me to rephrase it, and I certainly will.</p> <p>17 What do you do for the Division of History?</p> <p>18 A. I am the review and compliance coordinator for the SHPO</p> <p>19 office, which is the State Historic Preservation Office.</p> <p>20 Q. Now in the course of your duties as the SHPO officer, have</p> <p>21 you come to be aware of TransCanada's PUC Application?</p> <p>22 A. Yes.</p> <p>23 Q. And why is that?</p> <p>24 A. Because there is a number of federal agencies that are</p> <p>25 involved in the project. The Department of State is issuing a</p>
<p style="text-align: right;">1002</p> <p>1 schedule. I don't know how we don't take a half an hour when we</p> <p>2 get it.</p> <p>3 MR. RASMUSSEN: Let's go ahead and see where we get.</p> <p>4 MR. SMITH: Okay. Then Mr. Rasmussen, do you want</p> <p>5 to --</p> <p>6 MR. RASMUSSEN: The first witness will be</p> <p>7 Paige Hoskinson Olson. What I have talked to Ms. Giedd about</p> <p>8 doing, she's familiar with these people. She's going to go</p> <p>9 ahead and examine them to get a background, and depending on</p> <p>10 what we've got after that. But she'll start on that.</p> <p>11 MR. SMITH: Mr. Hohn, are you going to yield your seat</p> <p>12 for a while to Ms. Giedd?</p> <p>13 MS. GIEDD: Thank you. For the record, I'm Deputy</p> <p>14 Attorney General Roxanne Giedd. I am appearing on behalf of the</p> <p>15 subpoenaed witnesses, all of whom were here at 9 a.m., and we</p> <p>16 will be here again tomorrow for you.</p> <p>17 MR. SMITH: We apologize. Is it Ms. Paige and</p> <p>18 Roxanne?</p> <p>19 CHAIRMAN JOHNSON: Hoskinson.</p> <p>20 THE WITNESS: Olson.</p> <p>21 MR. SMITH: Okay. I'm confused. At any rate,</p> <p>22 unfortunately we just aren't able to completely predict how</p> <p>23 rapidly things will go, and I apologize for that.</p> <p>24 CHAIRMAN JOHNSON: Even within a 24-hour period.</p> <p>25 That's a big plus or minus, Mr. Smith.</p>	<p style="text-align: right;">1004</p> <p>1 presidential permit, which is -- because it's a permit, then the</p> <p>2 National Historic Preservation Act comes into play.</p> <p>3 Q. And the National Historic Preservation Act is a federal</p> <p>4 act?</p> <p>5 A. It is.</p> <p>6 Q. And what obligations does it impose on the State of South</p> <p>7 Dakota?</p> <p>8 A. On my office?</p> <p>9 Q. Uh-huh.</p> <p>10 A. Our office is responsible for reviewing all federal</p> <p>11 undertakings. And a federal undertaking is anything that is</p> <p>12 licensed, permitted, or funded by a federal agency or technical</p> <p>13 advice is given by a federal agency. It's our responsibility to</p> <p>14 ensure that historic properties are taken into consideration</p> <p>15 through that process.</p> <p>16 Q. Okay. And so the only thing that you're looking at is</p> <p>17 historic properties associated with the proposed project?</p> <p>18 A. Yes.</p> <p>19 Q. Could you just very generally give the Commissioners an</p> <p>20 explanation of the process that you have to go through under the</p> <p>21 National Historic Preservation Act?</p> <p>22 A. Yes. The process itself is there's the National Historic</p> <p>23 Preservation Act, and then there's Section 106 of that Act. And</p> <p>24 the implementing regulations that dictate how Section 106 works</p> <p>25 is called 36 CFR Part 800. Essentially, it's the federal</p>

<p style="text-align: right;">1005</p> <p>1 agency's responsibility to establish whether or not they have an</p> <p>2 undertaking and if that undertaking has a potential to affect</p> <p>3 historic properties.</p> <p>4 If it is an undertaking without the potential to affect</p> <p>5 historic properties, then the federal agency is done.</p> <p>6 The next step is to identify -- if it is a valid</p> <p>7 undertaking, then the next step is to determine whether or not</p> <p>8 there are historic properties within the project area. If there</p> <p>9 aren't, then the federal agency is done. If historic properties</p> <p>10 are identified, then they need to evaluate them for listing on</p> <p>11 the National Register. And that's kind of the threshold for a</p> <p>12 historic property.</p> <p>13 So if it is determined that historic properties are, in</p> <p>14 fact, within the project area, then the federal agency needs to</p> <p>15 determine what effects the project will have to those</p> <p>16 properties. If it's determined that the project or the</p> <p>17 undertaking will not have an adverse effect, then the federal</p> <p>18 agency is done with the process.</p> <p>19 If it's determined that the undertaking will have a</p> <p>20 negative impact on those properties, then it's an adverse</p> <p>21 effect, and the federal agency continues consultation with our</p> <p>22 office to mitigate those adverse effects through a Memorandum of</p> <p>23 Agreement.</p> <p>24 Q. Okay. Now I'm kind of a bottom line person. Tell me</p> <p>25 what -- do you issue a permit? Do you issue approval? What is</p>	<p style="text-align: right;">1007</p> <p>1 of State.</p> <p>2 Q. And were there other federal agencies that are also</p> <p>3 involved in the Section 106 process with regard to TransCanada's</p> <p>4 Application?</p> <p>5 A. Yes. There's a number of them.</p> <p>6 Q. And what agencies are those?</p> <p>7 A. I probably can't name all of them, but U.S. Fish &amp;</p> <p>8 Wildlife, the Corps of Engineers, I believe Farm Service Agency,</p> <p>9 Natural Resource Conservation Service. Those are all the ones I</p> <p>10 can recall, but I'm sure there's more.</p> <p>11 Q. Okay. And when you said that the Department of State is</p> <p>12 the lead agency, what does lead agency mean?</p> <p>13 A. That means that they have taken over the responsibility for</p> <p>14 compliance with the National Historic Preservation Act on behalf</p> <p>15 of the other agencies.</p> <p>16 Q. Okay. And they're the ones responsible for following this</p> <p>17 act?</p> <p>18 A. Yes, they are.</p> <p>19 Q. Okay. And you as the SHPO I think is the term you used --</p> <p>20 what does that stand for?</p> <p>21 A. The State Historic Preservation Office.</p> <p>22 Q. Okay. As the SHPO you're involved in the process in what</p> <p>23 manner?</p> <p>24 A. And actually Jay Vogt is the SHPO, and I'm representing</p> <p>25 him. I'm sorry.</p>
<p style="text-align: right;">1006</p> <p>1 it that you actually do when you do a Section 106 review?</p> <p>2 A. We concur or not concur with the agency's determination of</p> <p>3 effect.</p> <p>4 Q. You don't issue a permit?</p> <p>5 A. No.</p> <p>6 Q. You don't issue an approval?</p> <p>7 A. No.</p> <p>8 Q. When you say you concur or not, what happens if you don't</p> <p>9 concur?</p> <p>10 A. Well, if we don't concur, then the federal agency has the</p> <p>11 option to continue consultation with our office to come to a</p> <p>12 resolution. If in the end, though, we still don't agree, then</p> <p>13 they have the option to consult directly with the Advisory</p> <p>14 Council On Historic Preservation, which is a federal agency that</p> <p>15 has oversight over the National Historic Preservation Act. And</p> <p>16 then they would continue consulting with the Advisory Council.</p> <p>17 Q. And it sounds like -- is there any entity that makes a</p> <p>18 final determination?</p> <p>19 A. Yes. That would be the federal agency.</p> <p>20 Q. Which federal agency?</p> <p>21 A. I'm sorry. It would be the federal agency that is</p> <p>22 responsible for the project or the undertaking.</p> <p>23 Q. So in the case of TransCanada's Application, what federal</p> <p>24 agency is that?</p> <p>25 A. The lead federal agency for this project is the Department</p>	<p style="text-align: right;">1008</p> <p>1 Q. How are you and Vogt -- what does the SHPO do in terms of</p> <p>2 the whole process for this Application?</p> <p>3 A. We review all of the information that's submitted to us in</p> <p>4 terms of the identification of historic properties.</p> <p>5 Q. Now are paleontological resources like a Tyrannous Rex</p> <p>6 considered historic properties?</p> <p>7 A. No.</p> <p>8 Q. Are they protected at all?</p> <p>9 A. Not under the National Historic Preservation Act.</p> <p>10 Q. Are they protected otherwise under state laws?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. What kind of historic -- can you describe some of</p> <p>13 these historic properties that are protected under the National</p> <p>14 Historic Preservation Act?</p> <p>15 A. Yes. Any type of property that is eligible for listing on</p> <p>16 the National Register that is actually listed. And so that</p> <p>17 could be a building or a structure or an archeology site. It</p> <p>18 could be a traditional cultural property such for example as</p> <p>19 Bear Butte. It could be an object. Anything that would have a</p> <p>20 significant value.</p> <p>21 Q. And at the conclusion of your review what do you do? What</p> <p>22 do you do in terms of -- did you send something to the</p> <p>23 Department of State? What do you physically do?</p> <p>24 A. What we would do is we would issue correspondence</p> <p>25 concurring with their determination of effect.</p>

<p style="text-align: right;">1009</p> <p>1 Q. Okay. And at this point in the Section 106 process with</p> <p>2 regard to TransCanada's Application where are you in the</p> <p>3 process?</p> <p>4 A. As far as I'm concerned, we are still in the identification</p> <p>5 process. So it would be the second step of the process.</p> <p>6 Q. And the process is currently ongoing?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 MS. GIEDD: I would have no more foundational</p> <p>10 questions.</p> <p>11 MR. RASMUSSEN: Thank you. You did a lot better job</p> <p>12 on that than I would have.</p> <p>13 And you're doing a very nice job for your first time.</p> <p>14 <u>DIRECT EXAMINATION</u></p> <p>15 <u>BY MR. RASMUSSEN:</u></p> <p>16 Q. Tell me again, you said you're in the identification</p> <p>17 process, which is the second step?</p> <p>18 A. Uh-huh.</p> <p>19 Q. What was the first step?</p> <p>20 A. To determine whether or not the project is a federal</p> <p>21 undertaking. And if it is, if it has the potential to affect</p> <p>22 historic properties.</p> <p>23 Q. So the answer to that question was yes?</p> <p>24 A. Yes.</p> <p>25 Q. And so you move into identification?</p>	<p style="text-align: right;">1011</p> <p>1 A. I believe there's confusion in terminology with the</p> <p>2 consultant doing the work. Which is fine. Which is fine.</p> <p>3 Q. What do you mean there's a confusion?</p> <p>4 A. They're referring to a 100 percent survey as a Level 2.</p> <p>5 And the -- and a windshield survey is a reconnaissance. But we</p> <p>6 don't really have a specific term for a windshield survey.</p> <p>7 Q. Should a complete 100 percent survey be done in this</p> <p>8 particular instance?</p> <p>9 A. That's not really my call.</p> <p>10 Q. Okay. But if a Level 3 which is usually done is done,</p> <p>11 that's what would happen?</p> <p>12 A. That's what would be -- yeah. If I saw something that said</p> <p>13 it was done to a Level 3, I would assume the whole project area</p> <p>14 had been done.</p> <p>15 Q. Whose call is it as to whether they do a 100 percent survey</p> <p>16 or a sample survey?</p> <p>17 A. It's the federal agency's determination to determine how</p> <p>18 best to identify historic properties. And when I say federal</p> <p>19 agency, I mean the Department of State.</p> <p>20 Q. Does the State of South Dakota have any input into that</p> <p>21 decision?</p> <p>22 A. If they ask us to make recommendations, we certainly can,</p> <p>23 but, no, we don't. Not officially, no.</p> <p>24 Q. What if the State of South Dakota was calling the shots</p> <p>25 here? It would be a Level 3 survey?</p>
<p style="text-align: right;">1010</p> <p>1 A. Uh-huh.</p> <p>2 Q. So what is done then to identify potential historical</p> <p>3 sites?</p> <p>4 A. So far there has been some on the ground survey and some</p> <p>5 reconnaissance survey of the project area.</p> <p>6 Q. And who does that?</p> <p>7 A. That would be a third-party contractor in this case.</p> <p>8 Q. Okay. Hired by TransCanada?</p> <p>9 A. I believe so.</p> <p>10 Q. All right. And how is that survey typically done?</p> <p>11 A. The on-the-ground survey, which is typically a Level 3 but</p> <p>12 I think in this case they're calling it a Level 2, it's they</p> <p>13 walk the project area in transects looking for artifacts on the</p> <p>14 surface of the ground.</p> <p>15 Q. You said it's typically a Level 3 but in this case it's a</p> <p>16 Level 2?</p> <p>17 A. Yeah.</p> <p>18 Q. Tell me, what's a Level 3?</p> <p>19 A. In our state it's broken up into a Level 1, Level 2, and</p> <p>20 Level 3. And a Level 1 is considered a literature search or a</p> <p>21 records search. A Level 2 would be sort of a sample survey.</p> <p>22 And then a Level 3 would be a 100 percent survey of the project</p> <p>23 area.</p> <p>24 Q. And why is this -- you say typically it would be a Level 3.</p> <p>25 Why is a level 2 being done instead of Level 3 in this instance?</p>	<p style="text-align: right;">1012</p> <p>1 A. Sure. More is always better.</p> <p>2 MR. RASMUSSEN: Thank you. That's all I have.</p> <p>3 <u>CROSS-EXAMINATION</u></p> <p>4 <u>BY MR. HOHN:</u></p> <p>5 Q. Thank you for coming today, and sorry for the long wait.</p> <p>6 Your agency is involved in cultural resource reviews for rural</p> <p>7 water pipeline systems; is that correct?</p> <p>8 A. Yes. We're -- historic properties instead of cultural</p> <p>9 resources historic properties.</p> <p>10 Q. Okay. I'm sorry. I got the terminology wrong. If a rural</p> <p>11 water system is receiving federal funding or is being reviewed</p> <p>12 by a federal agency, they are required to do the survey; is that</p> <p>13 right?</p> <p>14 A. They're not required to do anything. They're just required</p> <p>15 to identify historic properties.</p> <p>16 Q. Okay. How many years have you been with this agency?</p> <p>17 A. Almost seven.</p> <p>18 Q. Okay. And while you've been at SHPO -- the SHPO office</p> <p>19 have you been involved or familiar with surveys that were done</p> <p>20 on rural water pipeline systems?</p> <p>21 A. Yes.</p> <p>22 Q. And were those surveys done at a Level 3?</p> <p>23 A. It depends on the length. But typically no.</p> <p>24 Q. Have you done any surveys of the WEB project? Have you</p> <p>25 been involved in any of the surveys done on the WEB project?</p>

<p style="text-align: right;">1013</p> <p>1 A. You know, I don't know. We review at least 2,000 projects</p> <p>2 a year so I cannot call -- I cannot recall specifically.</p> <p>3 Q. Okay. That's fine. Just one last question. You had</p> <p>4 mentioned that there's consultation.</p> <p>5 Is there consultation on cultural resources with the</p> <p>6 tribes?</p> <p>7 A. There is.</p> <p>8 Q. And do you have any involvement in that if it deals with a</p> <p>9 project in South Dakota? Or do you attend meetings?</p> <p>10 A. I attend meetings if I'm invited.</p> <p>11 Q. Okay. Did you attend a meeting recently in the last two</p> <p>12 months in Ft. Yates?</p> <p>13 A. Yes, I did.</p> <p>14 Q. And was that a meeting regarding consultation with the</p> <p>15 tribes?</p> <p>16 A. I believe it was a consultation meeting, yes.</p> <p>17 Q. And representatives from the U.S. State Department were</p> <p>18 present; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. At that meeting, as far as you know, was a consensus</p> <p>21 reached with the tribe and the State Department?</p> <p>22 A. I do not believe so. I was only there for one day, but I</p> <p>23 don't believe so.</p> <p>24 MR. HOHN: Okay. Thank you.</p> <p>25 MR. SMITH: Staff, do you have questions of this</p>	<p style="text-align: right;">1015</p> <p>1 Q. And with respect to the survey design and the level of</p> <p>2 survey that's done for cultural resources, is it also the</p> <p>3 Department of State which makes the ultimate determination as to</p> <p>4 whether or not that survey design and that research work is</p> <p>5 adequate?</p> <p>6 A. Yes.</p> <p>7 MR. WHITE: Thank you.</p> <p>8 MR. SMITH: Staff, now I'm properly over to you. Do</p> <p>9 you have questions?</p> <p>10 MS. SEMMLER: None. Thank you.</p> <p>11 MR. SMITH: Commissioners, do you have questions of</p> <p>12 the witness?</p> <p>13 CHAIRMAN JOHNSON: I'd like to have a big list so</p> <p>14 Ms. Hoskinson Olson wouldn't get off quite this easy, but I fear</p> <p>15 that I don't have any, Mr. Smith.</p> <p>16 MR. SMITH: Other Commissioners? I guess then I'm not</p> <p>17 quite sure which of you is redirect. I think it would be you,</p> <p>18 Mr. Rasmussen.</p> <p>19 MR. RASMUSSEN: And I have nothing further.</p> <p>20 MR. SMITH: Okay. You're excused then. Thank you</p> <p>21 very much. We really thank you for sitting around for so long.</p> <p>22 (The witness is excused)</p> <p>23 MR. SMITH: Do you want to proceed with one more</p> <p>24 person, Mr. Rasmussen?</p> <p>25 MR. RASMUSSEN: Yeah. That would be -- if everybody</p>
<p style="text-align: right;">1014</p> <p>1 witness?</p> <p>2 MS. SEMMLER: No. Thank you.</p> <p>3 MR. SMITH: And I don't know, Rox, what status to give</p> <p>4 you. Do you have any -- well, maybe we'll go to Commissioners</p> <p>5 and then -- oh, wait a minute. Pardon me. The Applicant.</p> <p>6 Goodness. Yeah. My head was turned this way, and I just</p> <p>7 couldn't get it back over.</p> <p>8 Mr. White, are you handling this one?</p> <p>9 MR. WHITE: It appears that way.</p> <p>10 MR. SMITH: I apologize for --</p> <p>11 MR. WHITE: That's okay. We're responsible for any</p> <p>12 confusion. Just a couple of questions, Ms. Olson.</p> <p>13 <u>CROSS-EXAMINATION</u></p> <p>14 <u>BY MR. WHITE:</u></p> <p>15 Q. With respect to consultation with the tribes, is it again</p> <p>16 the case that the Department of State is the lead federal agency</p> <p>17 in that regard?</p> <p>18 A. Yes.</p> <p>19 Q. And do they engage in what's known as</p> <p>20 Government-to-Government consultation?</p> <p>21 A. Yes.</p> <p>22 Q. And is it the Department of State which makes the ultimate</p> <p>23 determination as to whether or not the consultation that was</p> <p>24 conducted with the tribes has been adequate?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">1016</p> <p>1 else is okay with that, let's do it.</p> <p>2 Call John Kirk.</p> <p>3 (The witness is sworn by the court reporter)</p> <p>4 <u>DIRECT EXAMINATION</u></p> <p>5 <u>BY MS. GIEDD:</u></p> <p>6 Q. Mr. Kirk, would you state your name for the record, please.</p> <p>7 A. John Kirk.</p> <p>8 Q. And by whom are you employed?</p> <p>9 A. South Dakota Department of Game, Fish &amp; Parks.</p> <p>10 Q. What do you do for Game, Fish &amp; Parks?</p> <p>11 A. I head up a program in the Department that's known as the</p> <p>12 review department, environmental review.</p> <p>13 Q. And what does the Environmental Review Program do?</p> <p>14 A. We evaluate every development project like rural pipelines,</p> <p>15 this project that we're talking about here today, any irrigation</p> <p>16 project. We have a Water Rights Division. We follow the gold</p> <p>17 mines from exploration to final reclamation. We deal with all</p> <p>18 the water outlets in the lakes. We deal with DENR on ordinary</p> <p>19 high water marks. We handle the rare and threatened endanger</p> <p>20 species operations. We handle invasive species, aquatic evasive</p> <p>21 species in our (Inaudible) --</p> <p>22 MR. SMITH: John, can you pull the mic a little closer</p> <p>23 to your mouth. Thank you, sir.</p> <p>24 Q. And what's your ultimate goal?</p> <p>25 A. The ultimate goal? The ultimate goal is we evaluate every</p>

<p>1017</p> <p>1 project that comes about, no matter what it is. We don't</p> <p>2 support a project. We don't oppose a project. Our job is to</p> <p>3 make that project as acceptable as possible from an</p> <p>4 environmental point of view.</p> <p>5 Q. And when you refer to environmental, are you referring to</p> <p>6 wildlife resources?</p> <p>7 A. Wildlife resources, fish, wildlife, recreational resources</p> <p>8 as well.</p> <p>9 Q. Okay. Do you also have what's called a National Heritage</p> <p>10 Database?</p> <p>11 A. Yes, we do. We maintain that. It's a wonderful -- it's</p> <p>12 wonderful for development agencies. It lists all the</p> <p>13 threatened, rare, endangered species, unique habitats, all of</p> <p>14 this type of things that go back -- we've got records that go</p> <p>15 back into the 1800s. And it came into play on this project.</p> <p>16 Q. Okay. And you've already indicated you're familiar and</p> <p>17 involved with TransCanada Application for Game, Fish &amp; Parks;</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And would you explain what your involvement was in</p> <p>21 particular on this Application?</p> <p>22 A. Well, we started like in -- I believe it was two or three</p> <p>23 years ago, the initial '05, the initial meeting. And at that</p> <p>24 time we were asked to provide information in whatever -- which</p> <p>25 we have to do anyway to any type of project that comes about.</p>	<p>1019</p> <p>1 A. They're on the pipeline route. Or right adjacent to,</p> <p>2 depending.</p> <p>3 <u>DIRECT EXAMINATION</u></p> <p>4 <u>BY MR. RASMUSSEN:</u></p> <p>5 Q. What has been your involvement then with this particular</p> <p>6 project?</p> <p>7 A. Well, our involvement with this project started rather</p> <p>8 early on. We attended meetings with the Department of State,</p> <p>9 Corps of Engineers, Fish &amp; Wildlife Service, and NRCS has been</p> <p>10 involved. The state agencies have been involved, et cetera.</p> <p>11 We've had probably I believe it would be no less than nine,</p> <p>12 maybe 10 or 11 meetings in regard to this project.</p> <p>13 And our purpose of this project has been so far is to</p> <p>14 provide information, which we have done through numerous</p> <p>15 conversations and numerous meetings, numerous telephone calls</p> <p>16 providing data from the National Heritage Database.</p> <p>17 Q. Have you made any suggestions with regard to the</p> <p>18 construction of the pipeline or the route to TransCanada?</p> <p>19 A. The route, yeah. We've provided I think -- and I can't</p> <p>20 swear to this, but one of the unique areas that is listed in our</p> <p>21 National Heritage Database is the Hecla Sand Hills. And that</p> <p>22 project's been moved so that it did not affect those sand hills.</p> <p>23 Those sand hills are very productive biologically. They're</p> <p>24 an area of a lot of natural grasslands, kind of a rolling hill,</p> <p>25 a lot of wetlands, very productive from the wildlife standpoint.</p>
<p>1018</p> <p>1 And after that time we've met with the federal agencies.</p> <p>2 We've met with the state agencies. We've met with the</p> <p>3 consultant groups, you know, that they're hired by the</p> <p>4 TransCanada people. ENSR especially because they handle a lot</p> <p>5 of the environmental work with the project.</p> <p>6 Q. Before I turn you over to Mr. Rasmussen for more questions</p> <p>7 about the Application process itself, I neglected to ask you</p> <p>8 does Game, Fish &amp; Parks actually own some property that at one</p> <p>9 time may have been affected by the proposed routing of the</p> <p>10 pipeline?</p> <p>11 A. Three different portions. Three different areas.</p> <p>12 Q. You own three different areas of property?</p> <p>13 A. Yes. We've -- we've had our properties affected by</p> <p>14 numerous things. The Northern Border Gas Pipeline went across.</p> <p>15 We've had easements on that. We have electrical from the</p> <p>16 utilities companies and stuff like that. We have a lot of</p> <p>17 easements that way that we provide.</p> <p>18 Right now the Lewis &amp; Clark water pipeline. In fact, some</p> <p>19 of their intakes are on our land, and we really had to work</p> <p>20 around some things with that project.</p> <p>21 Q. And I -- and I apologize because I have forgotten. Do the</p> <p>22 properties, the three properties you mentioned that were -- I</p> <p>23 don't know whether they're on the pipeline route or they're near</p> <p>24 them.</p> <p>25 Would you just describe that for me, please.</p>	<p>1020</p> <p>1 Now what that meant, whether that had any effect on where</p> <p>2 TransCanada moved that pipeline, that would be best that they</p> <p>3 answered that. I don't know that it did. But that's one of the</p> <p>4 things we suggested.</p> <p>5 Q. You expressed some concerns about that area?</p> <p>6 A. Yes.</p> <p>7 Q. Have you expressed concerns about the pipeline going</p> <p>8 through any other areas?</p> <p>9 A. No. Not really. They've designed it around the National</p> <p>10 Wetlands Inventory Maps, information we provided, and it's very</p> <p>11 obvious to me that they've been in contact with the U.S. Fish &amp;</p> <p>12 Wildlife Service, EPA, et cetera. Because I can tell by reading</p> <p>13 the Environmental Impact Statement the amount of things that</p> <p>14 have been listed in there that, you know, precautions and stuff</p> <p>15 to take when in and around wetlands and stuff like that. I can</p> <p>16 tell that they've been influenced by them as well.</p> <p>17 Q. Does your agency prepare any sort of report regarding a</p> <p>18 project like this?</p> <p>19 A. No. We work with the company, with their representatives,</p> <p>20 et cetera. On a lot of federal projects involving federal money</p> <p>21 there has to be mitigation plans and stuff. The U.S. Fish &amp;</p> <p>22 Wildlife Service comes up with a plan. And then we have to</p> <p>23 concur with that plan. And if we don't concur with that plan,</p> <p>24 then it throws up red flags on that project. And this is</p> <p>25 handled by Department of State. And I don't know how that works</p>



<p>1021</p> <p>1 in this situation.</p> <p>2 Q. Have you been asked to concur in this particular instance?</p> <p>3 A. No. We envision this project at this time is a work in</p> <p>4 progress. Just the other day I got handed about five different</p> <p>5 studies that have been done by -- or by ENSR. And they're on</p> <p>6 various endangered species and things like -- issues like that.</p> <p>7 I think there was one on an orchid and stuff. I haven't</p> <p>8 had time to even look at them. Would have had a lot of time if</p> <p>9 I had been on at 9 o'clock this morning. I wasted a whole day.</p> <p>10 Q. But you could have brought them with you. You sat here.</p> <p>11 A. Yeah. But then you get interested in what's being said</p> <p>12 too. So, no, we haven't done anything like that.</p> <p>13 Q. I mean, it sounds like you're still -- your work is not</p> <p>14 done?</p> <p>15 A. That's right. It's a work in progress. And I don't know</p> <p>16 what changes will occur along the way, what decisions you people</p> <p>17 will make that may influence that or whatever, but we'll --</p> <p>18 we'll just work with them.</p> <p>19 MR. RASMUSSEN: All right. I have no further</p> <p>20 questions.</p> <p>21 MR. SMITH: I'm not quite sure what the actual order</p> <p>22 ought to be. Should you guys have a preference, or should we go</p> <p>23 in the same order we've been going all day which is --</p> <p>24 MR. KOENECKE: Yeah. We can keep going in the same</p> <p>25 order.</p>	<p>1023</p> <p>1 elaborate on that? Are you saying that 10 acres of land will</p> <p>2 have to be secured by that project to mitigate something</p> <p>3 damaged?</p> <p>4 MR. KOENECKE: I'm objecting to that. That's not</p> <p>5 relevant.</p> <p>6 THE WITNESS: Well, it's a different project entirely.</p> <p>7 MR. SMITH: Yeah. I don't think that's relevant.</p> <p>8 MR. HOHN: Okay.</p> <p>9 Q. Let me ask a different direction then, I guess. What</p> <p>10 you're saying I guess, are you saying that the -- at this point</p> <p>11 there have been -- there's been no mitigation plan implemented?</p> <p>12 MR. KOENECKE: That's what he said. Asked and</p> <p>13 answered.</p> <p>14 A. Right.</p> <p>15 MS. GIEDD: Wait until he's done with the question</p> <p>16 before you answer. The court reporter will kill you from</p> <p>17 behind.</p> <p>18 Q. Mr. Kirk, my last question is are you familiar with the --</p> <p>19 with Marshall County?</p> <p>20 A. Yes. Somewhat. Yes.</p> <p>21 Q. Are there wildlife resources in Marshall County?</p> <p>22 A. Sure there is.</p> <p>23 Q. Are you familiar with the Crow Creek Drain?</p> <p>24 A. Yes, I am.</p> <p>25 Q. How does the Crow Creek Drain from a wildlife standpoint</p>
<p>1022</p> <p>1 MR. SMITH: So Mr. Hohn next?</p> <p>2 MR. KOENECKE: Sure.</p> <p>3 <u>CROSS-EXAMINATION</u></p> <p>4 <u>BY MR. HOHN:</u></p> <p>5 Q. Mr. Kirk, you said a second ago, a moment ago, at this</p> <p>6 point it's still an ongoing process. At this point has there</p> <p>7 been identified wetlands or resources that might need to be</p> <p>8 mitigated?</p> <p>9 A. Well, number one, every time that we start off with any</p> <p>10 project our objective is to minimize the losses or avoid any</p> <p>11 types of impacts so there's a zero mitigation plan at the end.</p> <p>12 In lieu of that, you try and reduce the amount of activity</p> <p>13 that would disturb or cause mitigation to occur. And, lastly,</p> <p>14 the last thing you want to do is draw up a mitigation plan.</p> <p>15 On some projects -- like we're doing a lot of work with</p> <p>16 Lewis &amp; Clark. We're going to end up with right now it looks</p> <p>17 like something like a 10-acre mitigation plan. We've been very</p> <p>18 effective in reducing the amount of impacts.</p> <p>19 Now whether this -- they've agreed to all kinds of</p> <p>20 mitigated measures on wetland and every other way on our lands,</p> <p>21 reducing the size of easements, contouring bottoms of things,</p> <p>22 and all of that. So far we're very comfortable with what's been</p> <p>23 done. But in the end that doesn't mean that there might not be</p> <p>24 some little piece of something in the end.</p> <p>25 Q. With regard to Lewis &amp; Clark and the 10 acres, can you</p>	<p>1024</p> <p>1 fit in with wildlife, the Crow Creek Drainage District and where</p> <p>2 it drains?</p> <p>3 A. It depends upon how many trees are on it and what kind of</p> <p>4 vegetation you have alongside of it and the length of it and all</p> <p>5 of that. I'm familiar enough to know that, yes, birds use it,</p> <p>6 whatever. What's good for one thing maybe good or different for</p> <p>7 another.</p> <p>8 Q. From a wildlife standpoint and from your years of</p> <p>9 experience, do the waters in Marshall County, are they conveyed</p> <p>10 by the Crow Creek Drain to the James River?</p> <p>11 A. Well, it's a major drainage district.</p> <p>12 Q. And so waters in Marshall County will eventually find their</p> <p>13 way to the James River?</p> <p>14 A. Right. It's within that drainage district.</p> <p>15 Q. Your agency publishes a Fisherman's Handbook, and it lists</p> <p>16 what fish -- what fish shouldn't be eaten because of mercury and</p> <p>17 other factors; is that right?</p> <p>18 MR. KOENECKE: I object on relevance. I don't</p> <p>19 understand this line of questioning at all.</p> <p>20 MR. SMITH: Overruled.</p> <p>21 Q. Let me just restate the question. When you go to get a</p> <p>22 fishing license you get a little handbook that the agency</p> <p>23 publishes?</p> <p>24 A. Correct.</p> <p>25 Q. And in that handbook it lists a lot of information,</p>

<div>1025</div> <div> <p>1 including some places where if you take fish, you need to know</p> <p>2 there may be some cautions about mercury-contaminated fish.</p> <p>3 Am I correct?</p> <p>4 A. Yeah. That's correct.</p> <p>5 Q. To your knowledge is there any such listing in that</p> <p>6 handbook that's issued to fisherman then on benzene, toluene?</p> <p>7 A. Not that I'm aware of.</p> <p>8 MR. HOHN: Okay. Thank you.</p> <p>9 MR. SMITH: Is it you this time, Brett -- or</p> <p>10 Mr. Koenecke?</p> <p>11 MR. KOENECKE: I think it is me this time. I have no</p> <p>12 questions for this witness, Mr. Smith.</p> <p>13 MR. SMITH: Ms. Semmler, does staff have any</p> <p>14 questions?</p> <p>15 MS. SEMMLER: No questions. Thank you.</p> <p>16 MR. SMITH: Commissioners, do you have any questions</p> <p>17 of Mr. Kirk?</p> <p>18 COMMISSIONER HANSON: Not relevant to this, no.</p> <p>19 MR. RASMUSSEN: Go ahead. You've got him under oath.</p> <p>20 MR. SMITH: I believe you're excused.</p> <p>21 COMMISSIONER KOLBECK: Can I ask you about my elk tag?</p> <p>22 CHAIRMAN JOHNSON: Mr. Kirk, we would like to</p> <p>23 apologize again for the long delay in getting you on the stand.</p> <p>24 THE WITNESS: Okay. Well, that's fine because I would</p> <p>25 have been down at a Commission meeting otherwise. So one or the</p> </div>	<div>1027</div> <div> <p>1 STATE OF SOUTH DAKOTA)</p> <p>2 :SS CERTIFICATE</p> <p>3 COUNTY OF HUGHES )</p> <p>4</p> <p>5 I, CHERI MCCOMSEY WITTLER, a Registered Professional</p> <p>6 Reporter, Certified Realtime Reporter, and Notary Public in and</p> <p>7 for the State of South Dakota:</p> <p>8 DO HEREBY CERTIFY that as the duly-appointed shorthand</p> <p>9 reporter, I took in shorthand the proceedings had in the</p> <p>10 above-entitled matter on the 6th day of December 2007, and that</p> <p>11 the attached is a true and correct transcription of the</p> <p>12 proceedings so taken.</p> <p>13 Dated at Pierre, South Dakota this 2nd day of January</p> <p>14 2008.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 Cheri McComsey Wittler,</p> <p>20 Notary Public</p> <p>21 Registered Professional Reporter</p> <p>22 Certified Realtime Reporter</p> <p>23</p> <p>24</p> <p>25</p> </div>
<div>1026</div> <div> <p>1 other.</p> <p>2 CHAIRMAN JOHNSON: Don't tattle on us to Vonk.</p> <p>3 (The witness is excused)</p> <p>4 MS. GIEDD: Mr. Smith, Kim McIntosh is here, but I</p> <p>5 would suggest to you that her testimony would be a bit longer,</p> <p>6 if not quite a bit longer than the witnesses you've heard so</p> <p>7 far. So before you decide what you're doing, I wanted to alert</p> <p>8 you to that.</p> <p>9 MR. SMITH: Well, I guess my own vote would be that we</p> <p>10 call it a day. But I don't get to vote. I just get to suggest.</p> <p>11 You know, we've got another event here at 7 o'clock.</p> <p>12 I've had a long day. I'm going to recommend that we recess so</p> <p>13 that we can kind of freshen up for this evening.</p> <p>14 MR. RASMUSSEN: I agree.</p> <p>15 MR. SMITH: Any objection?</p> <p>16 MR. KOENECKE: No objection. Realistically, we've got</p> <p>17 less than an hour to get back here as it is.</p> <p>18 MR. SMITH: Commissioners, can we recess?</p> <p>19 COMMISSIONER HANSON: We certainly can.</p> <p>20 (The proceedings are in recess at 5:40 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div>	

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