

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION BY  
TRANSCANADA KEYSTONE PIPELINE, LP FOR  
A PERMIT UNDER THE SOUTH DAKOTA ENERGY      HP09-001  
CONVERSION AND TRANSMISSION FACILITY  
ACT TO CONSTRUCT THE KEYSTONE XL PROJECT

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Transcript of Proceedings  
November 4, 2009  
Volume III, Pages 394-604

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
DUSTY JOHNSON, CHAIRMAN  
STEVE KOLBECK, VICE CHAIRMAN  
GARY HANSON, COMMISSIONER

COMMISSION STAFF  
John Smith  
Kara Semmler  
Greg Rislov  
Tim Binder  
Stacy Splittstoesser  
Nathan Solem  
Bob Knadle  
Anissa Grambihler

APPEARANCES

James E. Moore      appearing on behalf of the Applicant  
Brett M. Koenecke    appearing as co-counsel on behalf of the  
                         Applicant  
James White            appearing as co-counsel on behalf of the  
                         Applicant  
Bill Taylor             appearing as co-counsel on behalf of the  
                         Applicant  
Paul Blackburn        appearing on behalf of Dakota Rural  
                         Action

Reported By Cheri McComsey Wittler, RPR, CRR

1                    TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota State Capitol  
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,  
4 on the 4th day of November, 2009, commencing at  
5 8:30 a.m.

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1                    ALSO PRESENT:  
2 Kelly Fuller, Plains Justice

3 =====

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1                    CHAIRMAN JOHNSON: All right. We are going to  
2 go on the internet and call to order the third day of the  
3 TransCanada Keystone XL siting hearing.

4                    And just quickly a recap of last night. We did  
5 have a public input meeting. I would guess there were  
6 probably about 80 or so in attendance, and we probably  
7 heard from a couple of dozen for sure. And I think we  
8 got every single question that was -- for which an answer  
9 was requested, answered.

10                   And I think it was very productive to adding to  
11 the Commission's understanding of what issues are  
12 important out in the field.

13                   So with that, unless there are any other  
14 preliminary matters my colleagues want to raise, we'll go  
15 ahead and turn the hearing back over to Hearing  
16 Examiner Smith.

17                   MR. SMITH: Thank you, Mr. Chairman.

18                   Staff, it's still your direct case. And I guess  
19 my understanding is that the telephonic witnesses that  
20 you had intended to call are going to be up first.

21                   So is that correct?

22                   MS. SEMMLER: That is correct. Jenny Hudson,  
23 William Mampre, and David Schramm should all be available  
24 on the phone this morning.

25                   MR. SMITH: Okay. And with that then go ahead

1 and proceed, staff, with your witnesses.  
 2 MS. SEMMLER: Okay. I would call Jenny Hudson.  
 3 Jenny, are you on the phone?  
 4 MS. HUDSON: Yes, I am.  
 5 CHAIRMAN JOHNSON: Ms. Hudson, this is  
 6 Chairman Johnson. Could you please raise your right hand  
 7 and answer this question.  
 8 (The witness is sworn by Chairman Johnson)  
 9 DIRECT EXAMINATION  
 10 BY MS. SEMMLER:  
 11 **Q.** Ms. Hudson, could you please introduce yourself and  
 12 give us a little background of your educational and work  
 13 experience.  
 14 **A.** **My name is Jenny Hudson. I am currently employed at**  
 15 **EN Engineering as a senior project manager. My business**  
 16 **address is 7135 Janes Avenue, Woodridge, Illinois 60517.**  
 17 **I have a bachelor of science in geological**  
 18 **engineering from the University of Missouri-Rolla, and I**  
 19 **am a registered professional engineer in the State of**  
 20 **Illinois.**  
 21 **At EN Engineering my roles and responsibilities**  
 22 **focus on pipeline integrity management, and I've been**  
 23 **involved with developing and evaluating integrity**  
 24 **management programs.**  
 25 **Q.** What portion of the Application, Ms. Hudson, did you

1 review?  
 2 **A.** **I reviewed portions related to the pipeline**  
 3 **integrity management plan.**  
 4 **Q.** And integrity management is something regulated by  
 5 PHMSA; correct?  
 6 **A.** **Yes, it is.**  
 7 **Q.** What particular code sections would that involve?  
 8 **A.** **That code is 49 CFR Part 195 Subpart F**  
 9 **Section 195.452.**  
 10 **Q.** And did you write and submit prefiled testimony for  
 11 this matter?  
 12 **A.** **Yes, I did.**  
 13 **Q.** And do you have that testimony in front of you?  
 14 **A.** **Yes, I do.**  
 15 **Q.** And if I were to ask you those questions, would you  
 16 answer them the same?  
 17 **A.** **Yes, I would.**  
 18 **Q.** So tell us a bit about what integrity management  
 19 means. Just provide us with some background, if you  
 20 could.  
 21 **A.** **Integrity management is a methodology to manage,**  
 22 **assess, evaluate, and repair pipelines in order to reduce**  
 23 **consequences to the environment and the general public in**  
 24 **the event of a pipeline release.**  
 25 **As part of integrity management operators are**

1 **required to have plans and procedures that describe how**  
 2 **the requirements of 49 CFR 195.452 will be implemented.**  
 3 **Q.** What are high consequence areas? What does that  
 4 mean?  
 5 **A.** **A high consequence area is defined by code as one of**  
 6 **the following: A commercially navigable waterway, a high**  
 7 **population area, an other populated area, or an unusually**  
 8 **sensitive area. And a USA is defined in 195.6 as**  
 9 **drinking water or ecological resources areas that are**  
 10 **unusually sensitive to environmental damage from a**  
 11 **hazardous liquid release.**  
 12 **Q.** And those areas are incorporated and considered in  
 13 the integrity management plan and the code sections;  
 14 correct?  
 15 **A.** **Can you repeat the question? I'm having a little**  
 16 **problem hearing you.**  
 17 **Q.** Certainly. Is this better?  
 18 **A.** **Yes.**  
 19 **Q.** Okay. And you just described and explained per code  
 20 sections what high consequence areas are. And those  
 21 sections, those areas are all considered per code in an  
 22 integrity management plan; correct?  
 23 **A.** **Correct.**  
 24 **Q.** And then integrity management plan is then subject  
 25 to PHMSA audits; is that correct?

1 **A.** **Yes, they are.**  
 2 **Q.** Does it appear from your review of the Application  
 3 that TransCanada is meeting all its requirements and the  
 4 time lines for submission, et cetera, per the federal  
 5 code?  
 6 **A.** **Yes, it does.**  
 7 MS. SEMMLER: I have no further questions.  
 8 MR. SMITH: Applicant, cross-examination.  
 9 MR. TAYLOR: No questions, Mr. Smith.  
 10 MR. SMITH: Dakota Rural Action,  
 11 cross-examination.  
 12 MR. BLACKBURN: Yes. Thank you.  
 13 CROSS-EXAMINATION  
 14 BY MR. BLACKBURN:  
 15 **Q.** Ms. Hudson, good morning. I'm Paul Blackburn. I'm  
 16 counsel for Dakota Rural Action. At the end of your  
 17 prefiled testimony you state Based on my review of the  
 18 Application to the extent data it is available, yes, in  
 19 response to the question, To the extent the data is  
 20 available does it appear TransCanada Pipeline LP --  
 21 (Discussion off the record)  
 22 **Q.** The question that was asked was to the extent that  
 23 data is available does it appear that TransCanada  
 24 Keystone Pipeline LP is in compliance with Part 195  
 25 Section 195.452?

1 And the answer was, "Based on my review of the  
 2 Application to the extent data is available, yes."  
 3 And my question is other than the Application what  
 4 data did you review?  
 5 **A. I have also reviewed a copy of their written**  
 6 **integrity management program. And then I also reviewed**  
 7 **prefiled testimony.**  
 8 **Q.** And so they -- and so TransCanada, did they include  
 9 the integrity management program within the Application?  
 10 **A. I do not know the answer to that question if it was**  
 11 **included as part of the Application or if that was**  
 12 **included separately. I do not know.**  
 13 **Q.** So TransCanada has prepared a complete integrity  
 14 management plan for this pipeline at this date?  
 15 **A. It appears so, yes.**  
 16 MR. BLACKBURN: Thank you. No further  
 17 questions.  
 18 MR. SMITH: Commissioner questions.  
 19 Commissioner Kolbeck.  
 20 COMMISSIONER KOLBECK: Yes. Could you go over  
 21 again with me, were there any high consequence areas?  
 22 THE WITNESS: Yes, there were.  
 23 COMMISSIONER KOLBECK: Okay. And were there any  
 24 discrepancies between what TransCanada had identified and  
 25 what you identified?

1 THE WITNESS: I did not actually identify any  
 2 high consequence areas myself.  
 3 COMMISSIONER KOLBECK: Okay. Do you have any  
 4 reason to believe that TransCanada would do anything but  
 5 fulfill what they should do in -- through these high  
 6 consequence areas?  
 7 THE WITNESS: No, I do not.  
 8 COMMISSIONER KOLBECK: Okay. Thank you.  
 9 MR. SMITH: Other Commissioner questions?  
 10 Commissioner Hanson, do you have a question?  
 11 COMMISSIONER HANSON: Thank you, Mr. Smith. You  
 12 may not be able to answer this, Ms. Hudson, but I'm  
 13 curious, according to the hazardous liquid pipeline laws,  
 14 pipelines constructed, put into service after May 29 of  
 15 2001, are required to have a written plan within one year  
 16 after the date the pipeline begins operation.  
 17 Do you know if it is the plan of -- I know  
 18 I'm -- you're not responsible for this, but do you know  
 19 if there is going to be a written plan prior to this  
 20 time?  
 21 THE WITNESS: I have seen a written plan.  
 22 COMMISSIONER HANSON: And is that -- I --  
 23 forgive me. I was assuming that that was a preliminary  
 24 plan. But you have seen it, and in your professional  
 25 opinion would that meet the requirements of a hazardous

1 liquid integrity -- of the hazardous liquid integrity  
 2 management rule?  
 3 THE WITNESS: It does appear to meet the  
 4 requirements of the integrity management rule. I do not  
 5 know if it's the intent of TransCanada for this to be a  
 6 preliminary plan or if they are going to make additional  
 7 revisions to it. But I have seen a document that appears  
 8 to meet the requirements of the rule.  
 9 COMMISSIONER HANSON: Thank you. And I'm  
 10 particularly concerned with drinking water resources  
 11 here.  
 12 Do you have expertise that would bring you to  
 13 the conclusion that adequate measures have been taken  
 14 through this plan to protect the drinking water sources  
 15 along and near the route?  
 16 THE WITNESS: Their plan appears to meet the  
 17 requirements of the rule, and the pipeline integrity  
 18 management rule requires operators to protect high  
 19 consequence areas.  
 20 COMMISSIONER HANSON: Do you have any concerns  
 21 about that -- or within your responsibilities of your  
 22 review?  
 23 THE WITNESS: No, I don't.  
 24 COMMISSIONER HANSON: I know that may seem  
 25 redundant based upon your testimony, but I guess it just

1 needs to be asked from the standpoint of there's a lot of  
 2 concern from property owners along the route that water  
 3 is so incredibly important, especially in areas where  
 4 there isn't a lot of drinking water to begin with.  
 5 And so I appreciate your answer. Thank you very  
 6 much.  
 7 Thank you, Mr. Chairman.  
 8 MR. SMITH: Any other Commissioner questions?  
 9 Staff, do you have any redirect?  
 10 REDIRECT EXAMINATION  
 11 BY MS. SEMMLER:  
 12 **Q.** Ms. Hudson, you indicated that you didn't personally  
 13 go and, you know, double-check where the HCAs are but you  
 14 wouldn't have knowledge, would you, whether other experts  
 15 did that? And those are all identified by the government  
 16 through the mapping system; correct?  
 17 **A. Correct. Locations of HCAs are available on the**  
 18 **National Pipeline Mapping System. And that is where**  
 19 **operators should be going to at least start their HCA**  
 20 **identification process.**  
 21 MS. SEMMLER: Thank you. Nothing further.  
 22 MR. SMITH: Applicant, do you have any follow  
 23 on?  
 24 MR. TAYLOR: Nothing.  
 25 MR. SMITH: Dakota Rural Action.

1 MR. BLACKBURN: I just want to confirm that the  
2 integrity management plan is part of the Docket for this  
3 proceeding.

4 MR. SMITH: Mr. Taylor --

5 MR. TAYLOR: The integrity management plan was  
6 filed under confidentiality with the PUC for Keystone.

7 MR. BLACKBURN: Thank you.

8 MR. SMITH: Is that all, Mr. Blackburn?

9 MR. BLACKBURN: That's all. Thank you.

10 MR. SMITH: Okay. Thank you. It's hard for me  
11 to say this I guess where you're at, Ms. Hudson, but  
12 you're excused. I'm not sure that means you have to  
13 leave the room.

14 But okay. Staff, please proceed with your next  
15 witness.

16 MS. SEMMLER: I'd like to call David Schramm.  
17 Mr. Schramm, are you on the phone?

18 MR. SCHRAMM: Yeah. Just a second here. We're  
19 switching chairs.

20 CHAIRMAN JOHNSON: Taking the stand.

21 MR. SCHRAMM: I am ready, yes.

22 CHAIRMAN JOHNSON: Mr. Schramm, this is Dusty  
23 Johnson, Chairman of the Commission. Could you please  
24 raise your right hand.

25 (The witness is sworn by Chairman Johnson)

1 CHAIRMAN JOHNSON: Thank you.

2 DIRECT EXAMINATION

3 BY MS. SEMMLER:

4 Q. Mr. Schramm, could you please introduce yourself to  
5 the Commission and give us an idea of your background in  
6 this subject matter.

7 A. Sure. My name is David Schramm. My business  
8 address is 7135 Janes Avenue, Woodridge, Illinois. I'm  
9 currently employed as the vice president and senior  
10 project manager with EN Engineering, which is an  
11 engineering and consulting firm specializing in pipeline  
12 design, pipeline integrity, and corrosion control  
13 technology services for the oil and gas industry.

14 I hold a B.S. Degree from Iowa State University, and  
15 I'm certified as a cathodic protection specialist and  
16 corrosion technologist by the National Association of  
17 Corrosion Engineers.

18 My professional experience consists of employment in  
19 the pipeline industry with EN Engineering, Nicor  
20 Technologies, Nicor Gas, Corpro Companies, and Harco  
21 Corporation.

22 My responsibilities in this position includes nearly  
23 30 years of extensive experience in the assessment and  
24 application of pipeline integrity, corrosion control  
25 programs, including corrosion control engineering,

1 analysis and design, process control and measurement,  
2 internal smart tooling, cathodic protection design,  
3 installation and maintenance, computerized close interval  
4 potential survey, direct current voltage survey, telluric  
5 current monitoring measurement and investigation, stray  
6 BC and AC interference testing and mitigation, coating  
7 selection and inspection, and materials selection and  
8 purchasing.

9 Q. What portion of the Application did you review?

10 A. My testimony specifically addresses the relevant  
11 portions of 49 CFR Part 195, Subpart H, corrosion  
12 control.

13 Q. And did you write and submit prefiled testimony on  
14 this matter?

15 A. Yes, I did.

16 Q. And do you have that with you?

17 A. Yes.

18 Q. If I were to ask you those questions, would you  
19 answer them all the same?

20 A. Yes, I would.

21 Q. Is this section of pipeline construction, corrosion  
22 control, is that regulated through PHMSA?

23 A. Yes, it is.

24 Q. And you previously did mention the code section.

25 Give us a brief summary regarding the various areas of

1 applicable code.

2 A. In this section of code which is under Subpart H it  
3 basically relates to the corrosion control programs to  
4 meet the federal requirements. Specifically it's to  
5 mitigate underground external corrosion from soils and  
6 waters, to meet federal requirements to mitigate internal  
7 corrosion, and to meet the federal requirements related  
8 to mitigating atmospheric corrosion and includes  
9 monitoring and assessment methods and requirements for  
10 reporting.

11 Q. And based on your review, does the Applicant's  
12 proposed corrosion program meet those federal code  
13 requirements?

14 A. For external corrosion, yes, it does. External  
15 corrosion is a primary consideration during design of a  
16 piping system. Coating selection is the first line of  
17 defense against external corrosion. But because perfect  
18 coatings are not feasible, cathodic protection must be  
19 used in conjunction with coatings for extended corrosion  
20 protection.

21 To this end, Subpart H requires each buried or  
22 submerged pipeline to have both an external coating for  
23 external corrosion control and must be cathodically  
24 protected. The external coating has to be designed to  
25 mitigate corrosion, have sufficient adhesion to the metal

1 surface to prevent underfill migration, be sufficiently  
2 ductile to resist cracking, have enough strength to  
3 resist damage due to handling and soil stress, support  
4 any supplemental cathodic protection, and if it's an  
5 insulating type of coating, have low moisture absorption,  
6 and provide high electrical resistance.

7 Subpart 8 also contains requirements for the  
8 Application of cathodic protection and additional  
9 measures that require the pipeline to be installed with  
10 an adequate number of test point locations, must be  
11 electrically isolated from foreign metallic structures,  
12 and should contain measures to alleviate interference  
13 currents.

14 As described in the documents reviewed, it's my  
15 professional opinion the Applicant proposes to take  
16 proactive and best practice approaches to coating  
17 selection and the protecting of the coating from  
18 application to burial.

19 In addition, the suggested cathodic protection meets  
20 or exceeds the requirements for design. Application and  
21 monitoring is required under Subpart H.

22 Q. We heard a lot of testimony yesterday about the  
23 various soil types that will be encountered along the  
24 route. And you just gave us a list of the variety of  
25 elements that go into corrosion control. But do you have

1 any concerns regarding the soil types along the route  
2 that could affect corrosion control?

3 A. I did a review basically of the soil types. It's a  
4 macro level review. Really looking at whether it's a  
5 clay, a silt, a salt, or a loam as provided.

6 In this macro approach from about mile post 282 to  
7 mile post 412 it's generally described as sandy loams and  
8 silty loams with loam and rock outcrops. In this kind of  
9 area the soil resistivity would be about 10,000 to  
10 100,000 loams, which would be classified as being mildly  
11 corrosive to negligible corrosion.

12 And basically from about mile post 412 to 595  
13 typically they describe the clay, the silty clays, with  
14 some rock and fine silt loam outcrops. This would  
15 suggest soil resistivity values in the range of 1,000 to  
16 10,000, and that would be classified as a degree of  
17 corrosion which is considered corrosive to mildly  
18 corrosive.

19 However, based -- regardless of the soil  
20 classification encountered along the pipeline, the  
21 cathodic protection design in the plan as provided  
22 appears more than adequate to mitigate the effects of  
23 external corrosion due to soils by the use of a  
24 protective pipeline coating in the Application of  
25 cathodic protection.

1 In addition, the Applicant has also included actions  
2 to install and energize the cathodic protection systems  
3 along with pipeline installation, ensure that a cathodic  
4 protection survey is completed within six months of the  
5 respective CP systems being put into operation, and to  
6 perform a close interval survey within two years of the  
7 pipeline in-service date.

8 Q. Now internal corrosion, as you indicated, is a whole  
9 nother area of pipeline activity. Tell us about the  
10 internal corrosion considerations you looked at and  
11 whether or not you think adequate -- it's been adequately  
12 planned for.

13 A. Okay. Internal corrosion is really focused on fluid  
14 movement, the use of protective treatments, minimizing  
15 sediments in water and conducting programs to monitor for  
16 the presence of internal corrosion.

17 For transportation of hazardous liquid, adequate  
18 steps must be put in place to mitigate any corrosive  
19 effects. The internal corrosion program proposed by the  
20 Applicant is proactively targeted towards the mitigation  
21 of internal corrosion by both design and operation and  
22 having increased requirements for product acceptance and  
23 for best practice internal inspection using smart line  
24 inspection tools.

25 In addition, the Applicant approach includes

1 pipeline design requirements which minimize horizontal  
2 dead legs and create turbulent product flow. A  
3 4.5 tariff requirement which limits sediment in water  
4 from all commodities and the inclusion of maintenance and  
5 operation programs that will make use of internal  
6 cleaning tools and smart in-line inspections where  
7 required, including the use of chemical inhibitors  
8 biocides, corrosion coupons, and/or probes.

9 Q. Finally, atmospheric corrosion. Tell us a bit about  
10 it, how it's different from what you've previously  
11 discussed, and whether or not you think that Applicant's  
12 proposed program meets the federal requirements.

13 A. Atmospheric corrosion is targeted a little  
14 differently. Basically the pipeline is up in the air,  
15 and so the portions that are exposed to the atmosphere  
16 have to be cleaned and protectively coated if exposed to  
17 the atmosphere.

18 Inspections and monitoring is really focused at  
19 soil-to-air interfaces under thermal insulation, under  
20 disbanded coatings, at pipe supports, deck penetrations,  
21 and spans over water.

22 As described, the Applicant addresses this  
23 requirement by taking actions to ensure that the  
24 soil-to-air interface is properly coated with suitable  
25 protective coatings and overcoated with a corrosion

1 resistance paint or protective coating to a distance of  
2 18 inches above grade.  
3 They are protectively coating all pipeline -- piping  
4 above grade with a corrosion resistant paint and  
5 performing operation and maintenance programs that  
6 require a periodic visual inspection of the coating  
7 condition.

8 MS. SEMMLER: I have no further questions.

9 MR. SMITH: Applicant.

10 MR. TAYLOR: No questions. Thank you.

11 MR. SMITH: Dakota Rural Action.

12 MR. BLACKBURN: Yes. Thank you. Again, this is  
13 Paul Blackburn, counsel or Dakota Rural Action.

14 CROSS-EXAMINATION

15 BY MR. BLACKBURN:

16 Q. I had a question about the cathodic protection  
17 systems. How far -- about how far along the pipeline are  
18 those spaced? Could you describe the factors for  
19 determining the location of the cathodic protection  
20 systems in the pipeline?

21 A. The Applicant right now has proposed that the  
22 cathodic protection systems are going to be installed  
23 along with the pump stations. I believe there are seven  
24 scattered through South Dakota.

25 They are intending to design the system using a deep

1 anode system. Basically the anodes are installed  
2 vertically in a column to some degree of depth. The  
3 impressed current rectifier is attached to that, and  
4 current is generated from the anodes over to the pipeline  
5 to complete the circuit.

6 The distance in the design of that is strictly based  
7 on soil resistivity data gathered during the time of  
8 design to determine circuit resistance. It also looks at  
9 the coating quality to determine how well the coating is.

10 And typically for fusion bonded epoxy coatings  
11 similar to what the Applicant has proposed the coatings  
12 are usually well over 99 percent effectively coated and  
13 in some cases almost 99.9 percent effectively coated.

14 And so based on that, there's very little exposed  
15 surface area of the pipeline into the ground. And that's  
16 part of the design calculations. And so the less metal  
17 exposed, the more cathodic protection current available  
18 for a longer distance down the pipeline.

19 Q. Thank you. What's the distance between the anodes  
20 and the pipe itself?

21 A. The anodes are constructed specifically -- they  
22 could be a variety of materials from mixed metal oxide  
23 anodes to Duriron anodes to high siliconized cast iron to  
24 straight carbon anodes. They are essentially a grounding  
25 element to basically discharge the cathodic protection

1 current into the ground. So pipeline acts to receive  
2 that current and, therefore, cathodically protect the  
3 pipeline.

4 Q. I understand that. What's the distance between  
5 the -- where the anode is installed and the metal in the  
6 pipe?

7 A. In a case of a deep anode system I'd have to  
8 triangulate it. But if you consider the anodes being  
9 almost 200 feet, for example, in the ground, the --  
10 you're talking, you know, hundreds of feet.

11 Q. Thank you. How many anodes will be installed  
12 roughly along -- if you know exactly, along the pipeline?

13 A. I do not know. I have not seen the specific design,  
14 only the intent. They're intending to install deep anode  
15 systems at the seven pump stations at this particular  
16 time.

17 That approach as what they're doing meets the code  
18 requirements to install cathodic protection.

19 Q. So the anodes would be placed only at the pump  
20 stations is your understanding?

21 A. As I have seen the present design, that is correct.

22 Q. What's the design life for a cathodic protection  
23 system?

24 A. Typically -- and I believe there was a response  
25 question I guess done to that, but right now I believe

1 their design is 25 years. Those are easily replaced so  
2 that's basically the initial design life, but the  
3 replacement is fairly simple to replace that, extending  
4 it almost to an infinite life if you need to.

5 Q. And does replacement include replacement of the  
6 anodes as well as the current inducers?

7 A. Typically if you are replacing the anode ground bed,  
8 it's the replacement of the anodes, yes.

9 Q. And could you describe the service impacts of  
10 installing an anode?

11 A. The surface impacts as described by -- under this  
12 with deep anode systems, it's a deep well construction.  
13 The anodes are installed vertically so it's a very  
14 minimal footprint. You're talking an 8-inch or 6-inch  
15 column basically pulling those anodes back out of that  
16 column and reinserting them in. So it's a very small  
17 footprint.

18 Q. So it's similar to drilling a well is what you're  
19 saying?

20 A. Could be, yes.

21 MR. BLACKBURN: Okay. Thank you. No further  
22 questions.

23 MR. SMITH: Commissioners, do you have  
24 questions?

25 COMMISSIONER KOLBECK: Do you know of any -- in

1 your testimony you say that as described the Applicant  
2 addressed these requirements by taking actions to ensure  
3 that -- protectively coating all piping above grade with  
4 a corrosion resistive paint.

5 Do you know of any other -- anything that's  
6 better than what the Applicant is using?

7 THE WITNESS: It's basically -- I mean, there's  
8 various forms of protective coating or paints is how you  
9 want to call them. 99 percent of everything is probably  
10 done through a protective coating like a paint.

11 There are some specific applications such as  
12 under thermal insulation, areas that have progressively  
13 or are typically very moist due to operations sometimes  
14 where additional coatings can be done. But in a general  
15 industrywide that is the best approach.

16 COMMISSIONER KOLBECK: Okay. The fusion bond  
17 epoxy, that's the -- that they plan to use, is there a  
18 different method that would be a better method that  
19 you're aware of?

20 THE WITNESS: I believe fusion bonded epoxy is  
21 the best pipeline coating out there these days.  
22 Certainly has a lot of history. It's a very, very good  
23 compatible cathodic protection coating, pipeline coating.  
24 So I think that is one of the better coatings.

25 COMMISSIONER KOLBECK: Mr. Blackburn asked you

1 about anodes. Could you maybe try to paint me a picture.  
2 You said that they will be at the pump stations.

3 Are they enclosed in a box or are they buried in  
4 the ground or are they attached to the fence? Could you  
5 help me understand that just a little bit better.

6 THE WITNESS: Sure. And I'm going to start  
7 basically with a rectifier. The rectifier sits probably  
8 on a post. It's tied to the AC side of the system so  
9 there's an AC input to it. The rectifier basically  
10 converts AC to DC so it's nothing more than a battery  
11 charger.

12 The positive side of that unit is connected to  
13 the anodes. The anodes are buried in the earth. The  
14 current flows from the anodes over to the pipeline where  
15 the current is picked up by the pipeline and travels down  
16 the pipeline wall to a wire that is connected to the  
17 pipeline.

18 That wire completes the circuit, and the current  
19 flows back up the wire to the rectifier or the impressed  
20 current system to complete the circuit.

21 COMMISSIONER KOLBECK: Okay. So it's a closed  
22 loop system?

23 THE WITNESS: It's a closed loop system. Which  
24 in order to be electrical you have to have a completed  
25 circuit to have electricity to flow, yes.

1 COMMISSIONER KOLBECK: Sure. So are they  
2 typically alarmed? Is there something that would go off  
3 if that line was to break underground?

4 THE WITNESS: Basically the -- the pipeline  
5 itself is not watched -- I mean, related to cathodic  
6 protection is not that way. The system's, however,  
7 monitored on a monthly or bimonthly basis. Code requires  
8 it monthly. Most pipeline companies look at it once a  
9 month because they need to be operating in order to  
10 maintain cathodic protection.

11 There are gauges and monitoring to determine  
12 circuit resistance as well as the voltage and current  
13 being discharged. When you have upsets like loss of  
14 anodes or a broken wire it's usually indicated by the  
15 display gauges on the equipment itself.

16 COMMISSIONER KOLBECK: Okay. So there is a way  
17 to know that it's not working?

18 THE WITNESS: Correct.

19 COMMISSIONER KOLBECK: Okay. That's it. Thank  
20 you.

21 MR. SMITH: Other Commissioner questions?

22 COMMISSIONER HANSON: If I may, Mr. Smith.

23 Could you -- this is Commissioner Gary Hanson.  
24 Mr. Schramm, do you have -- would you be able to express  
25 an opinion on what you believe would be the duration of

1 the life of this pipe?

2 THE WITNESS: As best as I can answer it in this  
3 process, the corrosion programs that are designed or the  
4 Applicant has proposed to do on the pipeline are  
5 proactive in nature. The cathodic protection systems  
6 essentially because of replacement are indefinite in  
7 life.

8 If proper programs are in place, the systems  
9 are in operation and the coating is there, they are  
10 infinite. And so, therefore, you could have a very, very  
11 long time of systems in operation with little corrosion  
12 rate during that particular time.

13 COMMISSIONER HANSON: Well, infinite is a very  
14 long time.

15 THE WITNESS: Well, I said -- I mean, you can  
16 really run cathodic protection systems infinitely.  
17 Basically the whole premise of cathodic protection is to  
18 cathodically protect the pipe or make the pipe more  
19 cathodic to the anodes.

20 You are then basically moving the corrosion off  
21 the pipeline to the anodes. They are corroding. You  
22 replace them. It's much cheaper. You keep your pipeline  
23 from corroding.

24 And so in that process, you know, there are  
25 pipelines I work on a regular basis that were installed

1 in the '40s and the '30s and you dig them up and look at  
2 them and they look the day they went in.

3 And so in that case in an infinite basis you're  
4 mitigating down to an acceptable level, the acceptable  
5 level could be close to, you know, an infinite basis  
6 depending on how you run your programs and how you want  
7 to maintain those systems.

8 COMMISSIONER HANSON: Goodness. Thank you very  
9 much. Thank you, Mr. Smith.

10 MR. SMITH: Commissioner Johnson.

11 CHAIRMAN JOHNSON: You described your review of  
12 the corrosiveness of the soils on kind of a macro level.  
13 In your professional experience, I mean, to what extent  
14 does that macro level gloss over localized variations in  
15 the corrosivity of the soil?

16 THE WITNESS: Well, that's a functionality in  
17 the testing. And part of that is the testing that is in  
18 the PHMSA guidance on their waiver approval in that  
19 within two years after the pipeline is installed close  
20 interval survey is conducted over the top of the  
21 pipeline.

22 The whole measurement of cathodic protection is  
23 to determine what the pipeline starts with as far as its  
24 potential, and the applied potential of the pipeline is  
25 changed by the Application of cathodic protection.

1 Close interval survey is run over the top of the  
2 pipeline regardless of what the soil characteristics are  
3 at the time you're taking pipe to soil measurements  
4 continuously down the pipeline at 3-foot intervals. So  
5 you're getting a complete profile down the pipeline. And  
6 those numbers determine how well the pipeline is  
7 cathodically protected throughout all of these extreme  
8 environments at a micro level for the pipeline  
9 installation.

10 From that data then you can determine whether  
11 there needs to be supplemental cathodic protection in  
12 areas where there is micro cases of differences in soils.  
13 But that's the process of doing the postinspection  
14 testing.

15 CHAIRMAN JOHNSON: So talk to me about  
16 supplemental cathodic protection. Does -- what does that  
17 look like? How does that function?

18 THE WITNESS: I believe in the Applicant's  
19 submittal they discuss the fact that they were going to  
20 initially start with the cathodic protection systems at  
21 the seven pump stations. They believed that that would  
22 adequately protect the pipeline.

23 They also identified secondary sites of valve  
24 locations that might have AC power as well to do that.  
25 There are also cathodic protection options using galvanic

1 anodes that produce the same effect. They are directly  
2 attached to the pipeline in a small concentrated area.

3 And, again, you are basically preferentially  
4 corroding the anodes. They are easy to replace. They  
5 would install typically 3 to 5 foot away from the  
6 pipeline. And they would provide protection in a very  
7 concentrated area if that so needed to be done. But  
8 those are kind of the supplemental cathodic protection  
9 kind of things that would go on.

10 CHAIRMAN JOHNSON: With regard to internal  
11 corrosion, I know that's somewhat of a function of water  
12 and sediment. The Applicant obviously talks a fair  
13 amount about the tariff requirements to try to reduce the  
14 likelihood of internal corrosion.

15 Should this Commission be concerned about -- I  
16 mean, to what extent does flow affect that? I mean, if  
17 this pipeline was used less than expected, if it was  
18 slower flow, does that make it more likely that water and  
19 sediment would bottom out in low areas and perhaps be  
20 more likely to cause internal corrosion?

21 THE WITNESS: Pipeline velocity is what  
22 determines whether the pipeline is staying in a turbulent  
23 mode or a laminar mode. Water -- typically in the  
24 turbulent mode the water is entrained along with the  
25 product and is carried along so it doesn't drop out.

1 When you get down into a laminar flow, low velocities,  
2 that water or sediment has the potential to drop out.

3 In that particular case when they are in that  
4 kind of operation if they go there, they are also running  
5 pigging programs where they are actually inserting  
6 scraping and cleaning pigs that basically pushes that  
7 debris if it so should fall out to the pipe wall out and  
8 they're moving it out of the pipeline and so that's the  
9 fallback.

10 So I think that answers your question.

11 CHAIRMAN JOHNSON: So, you know, to paraphrase,  
12 yes, you know, less than turbulent flow would be a  
13 concern. But the PHMSA regulations have already taken  
14 that into account with requirements for pigging  
15 processes. Is that a proper summary?

16 THE WITNESS: It's a remedial action on the --  
17 but, I mean, it's a combination system looking at, you  
18 know, ensuring turbulent flow and ensuring that the  
19 pipeline is cleaned on a regular basis.

20 I believe in the system from the last pipeline  
21 they did a modeling program where they were looking at  
22 minimum, maximum flow rates. And they actually had one  
23 internal corrosion models program at which they commented  
24 in in the last proceedings as well.

25 CHAIRMAN JOHNSON: Thanks, very much. Thank

1 you, Mr. Smith.  
 2 MR. SMITH: Any other Commissioner questions?  
 3 Staff.  
 4 MS. SEMMLER: No further questions.  
 5 MR. SMITH: Do you have any follow up,  
 6 Applicant?  
 7 MR. TAYLOR: None.  
 8 MR. SMITH: Dakota Rural Action?  
 9 MR. BLACKBURN: Just one short set.  
 10 MR. SMITH: Please.

11 CROSS-EXAMINATION

12 BY MR. BLACKBURN:  
 13 **Q.** You described that the current would flow from the  
 14 rectifier through the ground to the pipe and then from  
 15 the pipe through a wire and back and complete the  
 16 circuit; is that correct?  
 17 **A.** That is correct.  
 18 **Q.** Could you describe the physical location of those  
 19 wires or wire that complete the circuit?  
 20 **A.** It basically could be attached within the pump  
 21 station itself. That's really part of the design.  
 22 TransCanada has indicated that they are installing the  
 23 pipeline and protecting both the station facilities and  
 24 the pipeline as integral units until that wire could be  
 25 positioned anywhere within the pump station itself on

1 **pump station piping to run over that system.**  
 2 **Q.** So the reason I'm asking these questions is to  
 3 clarify that no parts of the cathodic system would be  
 4 located in general along the pipeline other than at the  
 5 pump stations or where the systems are actually  
 6 installed -- just to confirm that replacement of the  
 7 cathodic system would not require impacts to landowners  
 8 for such replacement except for perhaps at the pump  
 9 stations?  
 10 **A.** Based on the preliminary design which relates to  
 11 those seven locations in the deep anode systems, that  
 12 would be a true statement. I don't believe they have  
 13 finalized their design so I can't comment to anything  
 14 beyond that.

15 MR. BLACKBURN: Thank you. That's all.  
 16 MR. SMITH: I think then you're excused,  
 17 Mr. Schramm.  
 18 Staff, please call your next witness.  
 19 MS. SEMMLER: I would like to call Mr. William  
 20 Mampre.  
 21 (The witness is sworn by Chairman Johnson)

22 DIRECT EXAMINATION

23 BY MS. SEMMLER:  
 24 **Q.** Mr. Mampre, could you please introduce yourself to  
 25 the Commission and give us an idea of your background

1 regarding this subject matter?  
 2 **A.** My name is William Mampre. I go by Bill so you can  
 3 call me Bill if you'd like. I work at EN Engineering,  
 4 and our office is located at 7135 Janes Avenue in  
 5 Woodridge, Illinois.  
 6 My background is at EN Engineering I'm vice  
 7 president and senior project manager working in the  
 8 pipeline group. In this group we do pipeline designs for  
 9 oil and gas pipelines across the country.  
 10 My background is I got a B.S. Degree from the  
 11 University of Illinois, electrical engineering. I've got  
 12 an M.B.A. from Dominican University there located in  
 13 River Forest, Illinois.  
 14 My professional background includes about 20 years  
 15 of work at Unical. There I held previous jobs from  
 16 engineer up to vice president. I worked in operations as  
 17 well as engineering. I did a lot of different various  
 18 engineering designs of pipelines as well as SCADA  
 19 systems.  
 20 And I handled the day-to-day operations and  
 21 maintenance of pipeline systems, mainly trunk lines  
 22 within the U.S. that Unocal operated.  
 23 **Q.** What portion of the Application did you review?  
 24 **A.** The SCADA system.  
 25 **Q.** And did you write and submit prefiled testimony in

1 this matter?  
 2 **A.** Yes, I did.  
 3 **Q.** And did you write and submit some supplemental  
 4 testimony in this matter?  
 5 **A.** Yes, I did.  
 6 **Q.** Do you have that testimony with you?  
 7 **A.** I sure do.  
 8 **Q.** And if I asked you those questions today, would you  
 9 answer them all the same?  
 10 **A.** Yes, I would.  
 11 **Q.** Are SCADA systems regulated through the federal  
 12 code?  
 13 **A.** Well, there's requirements within the federal code  
 14 that requires SCADA systems or ways that pipeline  
 15 companies can operate and maintain the pipeline and look  
 16 at leak detection, et cetera, yes.  
 17 **Q.** So what generally then does the code require?  
 18 **A.** Well, there's a couple of things. One, they have to  
 19 make sure that the barrels in equals the barrels out,  
 20 which is really what they call an overinsured or leak  
 21 detection process. And that will tell the pipeline  
 22 company whether or not there is any issues or concerns  
 23 about the integrity of the pipeline.  
 24 Additionally, they have to be able to control and  
 25 manage the operation of the pipeline, which is start and

1 **stop pumps, opening and close valves. There's several**  
 2 **different ways that you can do those operations, but the**  
 3 **most cost-effective way is to have a SCADA system where**  
 4 **you can remotely bring information and data back to a**  
 5 **central control center and then the control center then**  
 6 **can monitor the entire pipeline at one time. And they**  
 7 **have the ability to start and stop pumps and react in**  
 8 **emergencies in a far faster way than they would if they**  
 9 **manually operated the system.**

10 **Q.** And then aside from what's in the code itself, if  
 11 the special permit is approved for this project, are  
 12 there added safety features as conditions to that permit?

13 **A.** **There are some additional conditions in there. I**  
 14 **think there was some hydro test conditions. And I think**  
 15 **there was some indications on their SCADA system. And I**  
 16 **don't recall all the conditions in there, but they are a**  
 17 **little bit more stringent than the -- than the actual**  
 18 **code itself.**

19 **Q.** What system does the Applicant propose that it will  
 20 be using, what SCADA system, and is this a commonly used  
 21 system?

22 **A.** **The system they're using is a system by -- if I'm**  
 23 **pronouncing it right, is Delnet. And they are a producer**  
 24 **of SCADA equipment, and most of the major companies**  
 25 **within the U.S. use that type of system. I'm very**

1 **familiar with it.**  
 2 **I used to manage a control center. The basis for**  
 3 **our control center was a similar system. Delnet has**  
 4 **probably changed names or has merged over the past few**  
 5 **years and, however, it was the same system so it was one**  
 6 **that I would probably select myself.**

7 **Q.** After reviewing the Application and all the  
 8 testimony, you had some additional questions regarding  
 9 their control room, employee training, pipeline shutdown,  
 10 pipeline surge model, and you did ask those.

11 Were they adequately answered?

12 **A.** **I believe so. And I think the concern was I just**  
 13 **wanted to make sure that what they were doing was the way**  
 14 **that I have seen industry -- or other companies have**  
 15 **addressed these items. And I felt what they were doing**  
 16 **was as well as anybody else in the industry are**  
 17 **addressing these items.**

18 **Q.** Another important element, as I understand from your  
 19 testimony, are the communication systems that are used,  
 20 the communication system used to communicate to the pump  
 21 stations, terminals, main line block involves.

22 Do you believe from your review that that system is  
 23 adequate?

24 **A.** **Yes, I do.**

25 **Q.** Do you believe the Applicant has properly planned

1 for the unlikely event where the control center's unable  
 2 to function?

3 **A.** **Yes, I do. They have a couple backup plans. I know**  
 4 **that they have a -- a duplicate control center that I**  
 5 **think they said was around 20 to 22 miles away, if I**  
 6 **remember right, in which if they had a failure of one**  
 7 **control center computer system, they can then move over**  
 8 **to the other system within an hour I think is what they**  
 9 **indicated and go ahead and take over control.**

10 **In the event that there are other issues, they do**  
 11 **have backup plans for manning stations. They do have**  
 12 **backup plans for loss of communications for satellite**  
 13 **systems using dial up systems and other manning devices.**  
 14 **So I think that is more than adequate what is necessary**  
 15 **to operate a pipeline and similar to what other companies**  
 16 **do within the U.S.**

17 **Q.** In your testimony you indicate that surge pressures  
 18 and proper surge protection is a major engineering  
 19 concern.

20 Tell us a bit about -- us nonengineers what that  
 21 means and why it is so important.

22 **A.** **I guess the easiest way to explain surges is I think**  
 23 **people are probably more familiar with a water hammer.**  
 24 **I'm sure we all at our houses close off a faucet real**  
 25 **quick, and you hear the pipes rattle because there's a**

1 **surge or a hammer effect of the water moving through the**  
 2 **pipe.**

3 **That's the same kind of concern you would have on a**  
 4 **pipeline. If a valve goes closed, if a pump unexpected**  
 5 **shuts down, what happens is it sends a surge wave along**  
 6 **the pipeline. The important thing is things happen in**  
 7 **operating pipelines and I can't sit here and tell you**  
 8 **that pumps will not unexpectedly go down, you know, you**  
 9 **won't unexpectedly not lose power, those types of things.**

10 **The key is to make sure that you have adequate**  
 11 **safety devices along the pipeline to ensure that you**  
 12 **don't have an accident or a release of the product from**  
 13 **within the pipeline itself.**

14 **The pipeline, they are tested to 125 percent of the**  
 15 **MAOP. The Department of Transportation allows**  
 16 **110 percent surge pressure within the pipeline above the**  
 17 **maximum allowable operating pressure. And so they have**  
 18 **models that they have run, and they have indicated in**  
 19 **their testimony that they have -- the models that they**  
 20 **have they are not going to exceed the 110 percent**  
 21 **requirements of the DOT.**

22 **They also have the SCADA system, and they also have**  
 23 **local controls at the pump stations that will be able to**  
 24 **react faster in the event of some sort of surge or loss**  
 25 **of a pump. At one pump station they will be able to then**

1 **start shutting down units or controlling units back to**  
 2 **minimize the surge.**  
 3 **So I was pretty satisfied on how they were handling**  
 4 **the surges within the pipeline itself.**

5 MS. SEMMLER: I have no further questions.

6 MR. SMITH: Applicant.

7 MR. KOENECKE: I have no questions, Mr. Smith.

8 MR. SMITH: Dakota Rural Action.

9 MR. BLACKBURN: No questions.

10 MR. SMITH: Thank you. Commissioners, do you  
 11 have any questions on the SCADA system?

12 COMMISSIONER HANSON: No, I don't.

13 MR. SMITH: Okay. Oh, Commissioner Kolbeck.

14 COMMISSIONER KOLBECK: Could you -- there was  
 15 some talk of soil stress. And in your testimony you  
 16 speak of that a little bit. Could you elaborate what you  
 17 mean by that?

18 THE WITNESS: I don't know if I spoke of soil  
 19 stress.

20 COMMISSIONER KOLBECK: I might have wrote a  
 21 wrong note in a wrong spot then.

22 THE WITNESS: Yeah. I think I had not talked  
 23 about any soil stress. My main concern was on the SCADA  
 24 system and how it operated, how they controlled it, and  
 25 the safety devices within the SCADA system itself.

1 COMMISSIONER KOLBECK: Okay. And that's my  
 2 mistake.

3 THE WITNESS: That's okay.

4 COMMISSIONER KOLBECK: I asked a former witness  
 5 here what -- the SCADA system and how -- if he thought  
 6 there was anything better to use.

7 Do you have an opinion on what exactly -- or do  
 8 you have an opinion on what the best system to monitor  
 9 this would be? Is it the SCADA system, or is there  
 10 something else?

11 THE WITNESS: I think it's the SCADA system. I  
 12 operated pipelines for 20 years. I had control centers  
 13 reporting to me and I've actually designed control  
 14 systems and I've also designed leak detection systems.

15 What they are doing here is more than adequate  
 16 and the best that they can possibly do on monitoring the  
 17 system. And I was pretty pleased to read all the safety  
 18 devices that they have on the system.

19 COMMISSIONER KOLBECK: Okay. I appreciate that.  
 20 Sorry. I must have confused my notes and asked you the  
 21 wrong question. Thank you.

22 THE WITNESS: No problem. Thanks.

23 MR. SMITH: Staff, do you have any follow up to  
 24 Commissioner Kolbeck's questions?

25 MS. SEMMLER: No.

1 MR. SMITH: Applicant, do you? Dakota Rural  
 2 Action?

3 MR. BLACKBURN: No.

4 MR. SMITH: Thank you. I think with that,  
 5 Mr. -- is it Mampre?

6 THE WITNESS: That's correct.

7 MR. SMITH: Okay. Thank you. You're excused.

8 And if my understanding is correct, that  
 9 concludes the telephonic witnesses, I think. Is that  
 10 correct, staff?

11 THE WITNESS: We're done for the day so we can  
 12 sign off; correct?

13 MR. SMITH: You may. And thank you very much.

14 (The witnesses are excused)

15 MR. SMITH: Do you want to forge ahead, staff?

16 MS. SEMMLER: We're trying to coordinate right  
 17 now with a State witness that works in a different  
 18 building so if you could give me just a minute, we're  
 19 calling her right now.

20 MR. SMITH: Okay. That's fine. Do you want to  
 21 take just a short break, give the reporter a break?

22 MS. SEMMLER: Let's go ahead and just start with  
 23 Mr. Iles. He's here in the room.

24 I'd like to call Mr. Iles.

25 (The witness is sworn by the court reporter)

1 DIRECT EXAMINATION

2 BY MS. SEMMLER:

3 **Q.** Good morning. Could you please introduce yourself  
 4 to the Commission and give us some background regarding  
 5 your experience and what you do here for the State.

6 **A. My name is Derric Iles. I am the state geologist**  
 7 **and administrator of the Geological Survey Program,**  
 8 **Department of Environment and Natural Resources.**

9 **I earned a bachelor's degree in geology from the**  
 10 **University of Northern Iowa way back in 1975, master's**  
 11 **degree in geology from Iowa State University in 1977, and**  
 12 **I'm a certified professional geologist through the**  
 13 **American Institute of Professional Geologists, and I have**  
 14 **over 30 years of experience working for the State**  
 15 **Geological Survey here in South Dakota.**

16 **A couple of years of experience as a consultant**  
 17 **dealing with fuel tank leaks, underground tank leaks,**  
 18 **soil contamination, and those sorts of things.**

19 **In my present capacity I -- to be very succinct, I**  
 20 **plan, organize, and direct the activities of the**  
 21 **Geological Survey.**

22 **Q.** Did you review the relevant parts of this  
 23 Application to your expertise?

24 **A. Yes, I did.**

25 **Q.** And did you write and submit testimony in this

1 matter?

2 **A. Yes.**

3 **Q.** Do you see it there beside you?

4 **A. Yes, I do.**

5 **Q.** And if I asked you those questions today, would you

6 answer them the same?

7 **A. I would.**

8 **Q.** Just give us a brief summary, if you could, of the

9 testimony.

10 **A. I was asked questions regarding sensitive geological**

11 **areas or sensitive hydrological areas. And without being**

12 **given any definition as to what a sensitive area was, I**

13 **had to presume certain things. And I answered the**

14 **questions accordingly.**

15 **In terms of the geologic perspective of a sensitive**

16 **area, I indicated that, yes, there were such areas along**

17 **the pipeline route as related to potential fossil or**

18 **paleontological resources.**

19 **There are no maps in existence that would identify**

20 **the locations or types or magnitude or extent of fossil**

21 **resources along the pipeline route. However, the**

22 **literature is rife with documentation of certain fossil**

23 **resources in the geologic units through which the**

24 **pipeline is proposed to be constructed.**

25 **So there is the potential that through the**

1 **construction activities of the pipeline paleontological**

2 **resources may be encountered. I am not a paleontological**

3 **expert. There are others that should be asked questions**

4 **dealing with the specific types of fossil resources that**

5 **may be present.**

6 **But if such resources are encountered on school and**

7 **public lands belonging to the State of South Dakota,**

8 **South Dakota Law says that those resources belong to the**

9 **State. The State then has jurisdiction on how the**

10 **resources are handled, where they end up, those sorts of**

11 **things.**

12 **If the fossil resources are encountered on private**

13 **property, it's my understanding that the private**

14 **landowner is the owner of the fossil, and my suggestion**

15 **and sincere hope is that the landowner would contact the**

16 **Museum of Geology at the South Dakota School of Mines and**

17 **Technology for guidance on how to deal with the fossil**

18 **resource.**

19 **The bottom line is there's no way for any of us to**

20 **know if fossil resources of any significance will be**

21 **encountered during construction activities. So there's**

22 **nothing you can do to predict whether that's going to**

23 **happen or not.**

24 **Regarding hydrological resources, those related to**

25 **water I broke them out into two categories, one being**

1 **surface water resources. And I was primarily looking at**

2 **the potential for the movement of sediment during the**

3 **construction. Obviously, if you disturb the ground and**

4 **there's a rainfall event, gravity dictates that the**

5 **sediment and water are going to go downhill.**

6 **And the Applicant's report -- or Application**

7 **indicated there were several small drainages as well as**

8 **some major ones that were crossed by the proposed**

9 **pipeline route. And I just identified that there is the**

10 **potential for sediment to move downstream, which is not**

11 **rocket science.**

12 **I also looked at ground water resources because**

13 **roughly 75 percent of the state's population uses ground**

14 **water as their drinking water resource. And so ground**

15 **water wherever you are in the state is an important**

16 **consideration.**

17 **And the majority of the pipeline route as I**

18 **understand the proposed pipeline route does not cross**

19 **geologic units that are traditionally considered as an**

20 **aquifer. There is a certain portion of the pipeline**

21 **route along its most southern extent through South Dakota**

22 **in Tripp County that crosses what is called the High**

23 **Plains Aquifer. It may have been referred to in earlier**

24 **testimony as the sand hills area. I haven't been privy**

25 **to all of the testimony that has occurred prior to mine.**

1 **But, regardless, it is a significant aquifer in**

2 **South Dakota. As an example, the Tripp County water user**

3 **district, which is one of the several rural water systems**

4 **in South Dakota, has their well field in this particular**

5 **aquifer. It is west of the proposed pipeline route. It**

6 **is up gradient of the proposed pipeline route, meaning**

7 **water would not flow from the pipeline to the well field**

8 **but instead the other way around.**

9 **Tripp County water user district serves up some of**

10 **the best quality water of any rural water system in**

11 **South Dakota. So it is a significant water resource.**

12 **It's a high quality water resource, and I just simply**

13 **noted that the proposed pipeline route will cross that**

14 **particular -- what I would deem a sensitive hydrologic**

15 **area.**

16 **I was also asked some other questions regarding**

17 **whether I felt that the risks associated with crossing**

18 **the sensitive areas, be they geologic or hydrologic,**

19 **whether those risks could be adequately mitigated. And I**

20 **am not an expert in pipeline construction activities,**

21 **pipeline operation, or pipeline maintenance, but based on**

22 **my limited knowledge of those three things, I would**

23 **assume that if the pipeline is constructed, maintained,**

24 **and operated in an industry standard fashion, that the**

25 **risks could be adequately mitigated.**

1 MS. SEMMLER: I have no further questions.

2 MR. SMITH: Applicant.

3 MR. MOORE: Thank you, Mr. Smith.

4 CROSS-EXAMINATION

5 BY MR. MOORE:

6 **Q.** Mr. Iles, my name is James Moore. I'm one of the  
7 lawyers representing TransCanada, and I just have one  
8 question for you about potential fossil discoveries.

9 To the extent that there are no legal or regulatory  
10 restrictions on private landowners currently discovering  
11 or excavating fossils that may be located on their own  
12 properties, would you agree with me that the survey  
13 activities and construction of the proposed pipeline  
14 actually presents an opportunity for the discovery of  
15 fossils that might otherwise remain undiscovered in the  
16 ground?

17 **A. It presents a tremendous opportunity, yes.**

18 MR. MOORE: That's all I have right now. Thank  
19 you.

20 MR. SMITH: Thank you. Dakota Rural Action.

21 CROSS-EXAMINATION

22 BY MR. BLACKBURN:

23 **Q.** Good morning. You are I think aware better than  
24 anyone in this room the value of the paleontological  
25 resource, the value of those resources both in a

1 scientific and potentially in a financial sense. So we  
2 appreciate you being here today.

3 I have some questions about your testimony,  
4 particularly related to the mitigation of risks. You  
5 state, as you say in your testimony, such paleontological  
6 resources are the property of the State and their  
7 disposition's controlled by the State.

8 What conditions would you recommend should such  
9 resources be found on State lands to ensure that they are  
10 protected?

11 **A. I don't think that I'm the proper person to be**  
12 **answering that question. That question should be better**  
13 **directed to the Commissioner of School and Public Lands**  
14 **as that particular State agency has jurisdiction over the**  
15 **paleontological resources in the state.**

16 **Q.** Thank you. You do have a recommendation, though,  
17 that landowners consult with staff at the Museum of  
18 Geology at the South Dakota School of Mines in regard to  
19 handling disposition of paleontological resources. So  
20 you've made a recommendation for landowners to do so.

21 Have you made recommendations for the Applicant here  
22 what they should do if such resources are found?

23 **A. The recommendation would be the same. If they find**  
24 **them on private property, ultimately it's -- I don't know**  
25 **that it is the -- in this case TransCanada's**

1 **responsibility to report those as the fossil resource**  
2 **belongs to the landowner. But I would also encourage**  
3 **TransCanada to, likewise, contact the Museum of Geology**  
4 **at the School of Mines and Technology in Rapid City.**

5 **Q.** So you have no opinion that TransCanada should stop  
6 what it's doing and contact and notify appropriate  
7 interests in these deposits?

8 **A. I don't know if there's any legal requirement that**  
9 **they stop what they're doing. It would be my hope that**  
10 **they would contact the appropriate people for advice on**  
11 **how to handle the fossil resources if they are**  
12 **encountered. But I don't know that we can require that**  
13 **they do so.**

14 MR. BLACKBURN: Thank you. No further  
15 questions.

16 MR. SMITH: Commissioner questions of Mr. Iles?

17 CHAIRMAN JOHNSON: Mr. Iles, we have testimony  
18 from the Applicant in the record that there are more than  
19 4,000 miles of hydrocarbon pipelines in the state. In  
20 your professional experience have any of those existing  
21 pipelines in South Dakota caused notable damage to the  
22 geologic or hydrologic resources of South Dakota?

23 THE WITNESS: Yes.

24 CHAIRMAN JOHNSON: Could you give some examples?

25 THE WITNESS: There is a pipeline, and I am not

1 entirely sure of the present company's name that owns the  
2 pipeline. It could be Magellan Pipeline. It used to be  
3 Williams Pipeline in the Sioux Falls area.

4 That pipeline did experience a leak north of  
5 Sioux Falls in the Big Sioux Aquifer. It also  
6 experienced a leak again north of Sioux Falls farther  
7 along the pipeline just adjacent to the Big Sioux  
8 Aquifer.

9 Both of those instances required response and  
10 cleanup by the company.

11 CHAIRMAN JOHNSON: And I think we'll have a  
12 witness later who may be able to better address some of  
13 those environmental cleanup things. And I don't have the  
14 intention of having Commissioner Hanson take the stand  
15 either, although he would certainly have plenty of  
16 knowledge about that.

17 But other than that, I mean, I think that is a  
18 high-profile South Dakota case. Are there others with  
19 which this Commission might not be familiar?

20 THE WITNESS: I'm not aware of any others.

21 CHAIRMAN JOHNSON: Okay. Thank you very much.

22 MR. SMITH: Other Commissioner questions of  
23 Mr. Iles?

24 Commissioner Hanson.

25 COMMISSIONER HANSON: Mr. Smith, I -- Mr. Iles,

1 I just have one question.  
 2 With all of your experiences and looking at this  
 3 particular pipeline, would you agree that all of the  
 4 risks that would be in your -- within your expertise can  
 5 be properly mitigated?  
 6 THE WITNESS: Again, I'm not an expert in  
 7 pipeline operation and maintenance and construction, but  
 8 with my limited knowledge, it is my belief that the risks  
 9 can be adequately mitigated.  
 10 COMMISSIONER HANSON: Under your review have you  
 11 seen any gaps in the Application that would cause you any  
 12 sort of a concern?  
 13 THE WITNESS: I have not, but I must also tell  
 14 you that I did not review the Application in depth. I  
 15 only looked at those portions of the Application that  
 16 were relevant to the questions that I was asked.  
 17 COMMISSIONER HANSON: That's fine. Thank you  
 18 very much. Thank you, Mr. Smith.  
 19 MR. SMITH: And I think your testimony probably  
 20 might get us there without me even asking this, but I'm  
 21 going to anyway.  
 22 In the first Keystone case the Commission did  
 23 include a condition in its order that required  
 24 TransCanada to consider a certain shallow ground water  
 25 area in northern Marshall County as an unusually

1 sensitive area due to its shallow and hydrologically  
 2 interconnectedness with a water source. I have no idea  
 3 where the so-called HCAs are on this particular pipeline  
 4 route. I haven't. I haven't seen them.  
 5 But in your opinion would that sand hills area  
 6 fit the kind of situation where those kind of extra  
 7 surveillance measures might be appropriate in this case?  
 8 THE WITNESS: I believe that that would be  
 9 appropriate, yes.  
 10 MR. SMITH: Thank you.  
 11 CHAIRMAN JOHNSON: Mr. Smith, if I could. I  
 12 don't want to interrupt. If you're in the middle of a  
 13 line of questioning, go ahead.  
 14 MR. SMITH: No.  
 15 CHAIRMAN JOHNSON: That does sort of beg the  
 16 question because Mr. Iles mentions a few other sensitive  
 17 locations in his testimony. Are there others that you  
 18 would raise up as to particularly sensitive?  
 19 THE WITNESS: The High Plains Aquifer area is  
 20 the only one that I could identify as being a  
 21 particularly sensitive area, given the geologic mapping  
 22 that is available now.  
 23 The other potentially sensitive areas or  
 24 portions of geologic units that I did raise in my  
 25 prefiled testimony can't be predicted -- I can't point to

1 them on a map with the existing information that we have.  
 2 The descriptions of the geologic units that are  
 3 in the literature on the State Geologic Map, those sorts  
 4 of things include, for instance -- I will take the Pierre  
 5 Shale as an example. It is the -- it comprises a great  
 6 deal of the land surface in western South Dakota.  
 7 It is composed dominantly of clay sized  
 8 material. It is not considered to be an aquifer  
 9 generally speaking. However, there are certain ranchers  
 10 that will have large bored wells where water will  
 11 accumulate over time, and they pump it out. So to them  
 12 it is an aquifer.  
 13 But the reason for raising this as an example is  
 14 the description of the Pierre shale does include things  
 15 like minor sand stones. Well, where are those minor sand  
 16 stones? How minor are they? Where are they? Those  
 17 things cannot be predicted or determined right now with  
 18 the information that's available.  
 19 However, during pipeline construction they will  
 20 obviously see what it is that they are building the  
 21 pipeline through, and appropriate actions can be taken at  
 22 that time.  
 23 CHAIRMAN JOHNSON: Thank you, Mr. Iles. Thank  
 24 you, Mr. Smith.  
 25 MR. SMITH: Commissioner Kolbeck, do you have a

1 question?  
 2 COMMISSIONER KOLBECK: Yes. Mr. Iles, do you  
 3 think that there's more study needed? In other words, do  
 4 you think that the Applicant should be required to do  
 5 more land and soil use samples?  
 6 THE WITNESS: I don't believe so.  
 7 COMMISSIONER KOLBECK: Okay.  
 8 MR. SMITH: Any other Commissioner questions?  
 9 Staff, follow up?  
 10 MS. SEMMLER: I have no questions.  
 11 MR. SMITH: Applicant?  
 12 MR. MOORE: Thank you, Mr. Smith.  
 13 RE-CROSS-EXAMINATION  
 14 BY MR. MOORE:  
 15 **Q.** Mr. Iles, by definition an usually sensitive area is  
 16 one associated with public water sources that could be  
 17 impacted by a spill from the pipeline; correct?  
 18 **A. I'm not familiar with the definition. I will have**  
 19 **to take you at your word.**  
 20 **Q.** Then let me ask you this question: You referred to  
 21 the -- to the area in Tripp County that was up gradient  
 22 from the pipeline. If a spill occurred in that area  
 23 since it is up gradient of the pipeline, my question is  
 24 whether a spill would affect that area.  
 25 **A. The Tripp County Water User District well field in**

1 my opinion cannot be impacted by a leak from the proposed  
2 pipeline, regardless of the magnitude of a leak.

3 MR. MOORE: Thank you. That's all I have.

4 MR. SMITH: Dakota Rural Action, did you have  
5 anything?

6 MR. BLACKBURN: No questions.

7 MR. SMITH: Okay. Thank you. I think you may  
8 step down then. Thank you, Derric.

9 (Discussion off the record)

10 MR. SMITH: We're going to recess for  
11 approximately 10 minutes until 10 o'clock. And we'll be  
12 off the internet until that time.

13 (A short recess is taken)

14 MR. SMITH: Okay. We're back in session  
15 following a recess. Staff, please proceed with your  
16 direct case.

17 MS. GIEDD: Mr. Smith, before staff calls the  
18 next witness, is Mr. Iles excused?

19 MR. SMITH: Oh, yes. Yes, he is. He's excused.

20 MS. SEMMLER: I'd like to call Ms. Paige  
21 Hoskinson Olson.

22 (The witness is sworn by the court reporter)

23 DIRECT EXAMINATION

24 BY MS. SEMMLER:

25 Q. Please introduce yourself to the Commission and tell

1 us where you work and a bit about your experience,  
2 Ms. Olson.  
3 A. My name is Paige Hoskinson Olson, and I worked for  
4 the -- I work for the State Historical Society. I work  
5 specifically for the State Historic Preservation Office.  
6 I've been with the -- with the SHPO office, the State  
7 Historic Preservation Office, for approximately eight and  
8 a half years. I'm the review and compliance coordinator,  
9 and I've been doing that for about 7 and a half years. I  
10 have a master's degree in cultural resource management  
11 and archeology.

12 Q. And did you write and submit some testimony on this  
13 matter?

14 A. I did.

15 Q. And do you see that beside you there?

16 A. I do.

17 Q. And if I asked you those questions today, would you  
18 answer them all the same?

19 A. Yes, I would.

20 Q. Why don't you just tell us a bit about the process  
21 that takes place in your office and the summary, if you  
22 would, of the portions of the Application that you  
23 reviewed and the summary of the testimony you submitted.

24 A. Because the Department of State is issuing a permit,  
25 that triggers Section 106 of the National Historic

1 Preservation Act. And what that requires is that  
2 requires the Department of State to take into  
3 consideration historic properties that are within the  
4 project area, and so the project area's already been  
5 defined as the pipeline and all of its ancillary  
6 facilities.

7 And so it's our job to review -- to review the  
8 information that's produced by the Department of State to  
9 ensure that they are taking into consideration cultural  
10 resources. And so Section 106 is a four-step process  
11 that requires identification, evaluation of historic  
12 properties, and then to determine -- it's the Department  
13 of State's responsibility to determine what effects the  
14 project will have to those historic properties if they're  
15 found and then to minimize or mitigate the effects to  
16 those properties.

17 Q. And to the extent that you've been involved with  
18 this process, do you believe that the Applicant has  
19 complied with the process?

20 A. The Applicant is in the process of complying. And  
21 it's -- it's the State Department's responsibility to  
22 comply with the federal law, but they are in the process  
23 of doing so.

24 Q. In your testimony on page 9 you did offer some  
25 additional information, and you indicate that your agency

1 has made a recommendation to the Department of State, I  
2 believe it is. If you could just comment on that.

3 A. Yes. We recommended that they have a geomorphic  
4 study conducted of the project area to identify the areas  
5 that have the potential for deeply buried deposits  
6 because there's a lot of waterways. And so that was our  
7 recommendation as part of their identification efforts.

8 Q. And that would be something that the Department of  
9 State would evaluate and make their decision which has  
10 not yet been done. Is that accurate?

11 A. That is.

12 MS. SEMMLER: I have no further questions.

13 MR. SMITH: Applicant.

14 MR. MOORE: I have no questions. Thank you.

15 MR. SMITH: Dakota Rural Action.

16 MR. BLACKBURN: No questions. Thank you.

17 MR. SMITH: Commissioners, do you have questions  
18 of Ms. Hoskinson?

19 COMMISSIONER HANSON: I just have one. Good  
20 morning. It sounds like you have a really interesting  
21 job. You probably don't want to confess to that and have  
22 everybody in the world wanting it, but it sounds like a  
23 lot of fun.

24 You have indicated under one of your questions  
25 pertaining to a summarization of historically sensitive

1 areas one that is called historic farm/ranch.  
 2 THE WITNESS: Uh-huh.  
 3 COMMISSIONER HANSON: Do you recall that?  
 4 THE WITNESS: It's a historic farmstead that was  
 5 identified.  
 6 COMMISSIONER HANSON: Uh-huh. And I'm just  
 7 curious. What qualifies as a historic farm or ranch?  
 8 THE WITNESS: How that works is a historic  
 9 property that -- the National Preservation Act defines a  
 10 historic property as anything that is eligible for  
 11 listing or listed on the National Register of Historic  
 12 Places. And the National Register for Historic Places is  
 13 a program that's -- that the National Park Service --  
 14 it's their program.  
 15 And in order for a property to be determined  
 16 eligible for listing on the National Register there are  
 17 four different criteria. And it's criteria A is I  
 18 believe for events in history. Criteria B is for a  
 19 property's association with a person. C is for  
 20 architecture. And then D is for a property's ability to  
 21 yield additional information.  
 22 And so in order for a property to be considered  
 23 eligible it has to meet one of those criteria. And if I  
 24 recall, I believe all the criteria were applied, and so  
 25 it would have fallen under criteria probably -- probably

1 C or A for events.  
 2 COMMISSIONER HANSON: So what I'm curious  
 3 about -- and thank you for -- you answered my question as  
 4 I asked it.  
 5 I'm curious pertaining to the -- the breadth of  
 6 the registry. If it's -- if it's considered historic  
 7 ranch or farm, is it the entire farm or ranch that's  
 8 considered historic, or is it just a ranch -- a building  
 9 site?  
 10 THE WITNESS: It depends on how the building has  
 11 been -- it depends on how it's been recorded. And I  
 12 think in -- and I can look it up actually if you'd like  
 13 and tell you specifically. It depends upon how the  
 14 person recording it how it's recorded.  
 15 In general if you have a historic farmstead or a  
 16 ranch, it could be one building, or it could be multiple  
 17 buildings. And then you would have a district. And so  
 18 within that district you could have properties that  
 19 are -- that do meet the criteria and that do not. So it  
 20 would be contributing or noncontributing, and I think in  
 21 this case it was one single building.  
 22 COMMISSIONER HANSON: So that, in your opinion,  
 23 knowing this site and knowing -- do you know the route at  
 24 all? Did you spend time looking at how the route might  
 25 affect this particular property?

1 THE WITNESS: Not really. What I did was I  
 2 reviewed the survey or report that was provided to me.  
 3 And I commented on or a coworker commented on the -- on  
 4 the determinations of eligibility, if they were eligible  
 5 for listing or not.  
 6 And then we are in the process of developing a  
 7 programmatic agreement, or the Department of State is.  
 8 And at that time that's when if sites can't be physically  
 9 avoided, once the programmatic agreement is in place then  
 10 they'll be taken into consideration through the  
 11 development of the programmatic agreement.  
 12 COMMISSIONER HANSON: All right. And you just  
 13 answered my third or fourth or whichever question I was  
 14 on.  
 15 Thank you very much. Thank you, Mr. Smith.  
 16 MR. SMITH: Other Commissioner questions.  
 17 Commissioner Kolbeck.  
 18 COMMISSIONER KOLBECK: Thank you, Paige.  
 19 There's been some discussion of native prairie, a lot of  
 20 this may be nature prairie.  
 21 Are there any ramifications of disturbing native  
 22 prairie? Is that classified as anything historical, or  
 23 how does that rate?  
 24 THE WITNESS: There are landscape issues, but I  
 25 don't know that would be directly related to native

1 prairie. The only issue I can really think of would be  
 2 something related to perhaps the identification of a  
 3 traditional cultural property which would -- which in  
 4 South Dakota tend to be associated with the tribes. And  
 5 that would be up to them to identify those places.  
 6 COMMISSIONER KOLBECK: Okay. Do you do much  
 7 with paleontology?  
 8 THE WITNESS: Not at all.  
 9 COMMISSIONER KOLBECK: I was thinking you did.  
 10 And I think I misstated that earlier. Could you tell me  
 11 what a -- it says, Briefly describe some of the areas  
 12 crossed by the Keystone Pipeline. One of them was an  
 13 undated rock alignment. What is that?  
 14 THE WITNESS: It's a rock alignment that the  
 15 archeologists weren't able to date. There was nothing  
 16 that gave them clues to when it was constructed.  
 17 COMMISSIONER KOLBECK: Okay.  
 18 THE WITNESS: So --  
 19 COMMISSIONER KOLBECK: How about prehistoric  
 20 lithic scatter?  
 21 THE WITNESS: It depends on -- in terms of  
 22 dating, it depends on if they can find any material that  
 23 is dateable.  
 24 For example, like a lithic scatter could be --  
 25 and I actually have a definition I can -- would that be

1 appropriate? Okay.

2 COMMISSIONER KOLBECK: The reason I ask, Paige,  
3 is there's a ton of information and a lot of questions  
4 about fossils. And people are concerned -- obviously  
5 some of the best paleontology discoveries have been up in  
6 Harding County so we want to make sure we get it right.  
7 I thought that had something to do with prehistoric  
8 lithic scatter.

9 THE WITNESS: No. Everything that I would deal  
10 with in my office would deal with anything that dates  
11 from paleo Indian to present, and that's about 10,000  
12 years. So we don't have anything to do with the  
13 paleontology or dinosaurs at all. That's the millions of  
14 years.

15 COMMISSIONER KOLBECK: Sure.

16 THE WITNESS: But the lithic scatter, the way  
17 the State Archaeological Research Center defines an  
18 artifact scatter is lithic scatter, chips, stones,  
19 stations, generally thin deposits can be buried. They  
20 include aboriginal or historic materials distinguished by  
21 a cultural affiliation.

22 So in order to date something like that, you  
23 would have to have a tool or something that would tell  
24 you that you could associate with a specific time frame  
25 that's already been established.

1 COMMISSIONER KOLBECK: Okay. So a village or  
2 you're looking for something where someone had settled  
3 there and then left?

4 THE WITNESS: Right. Right. Archeology tends  
5 to be the remains of what people leave behind.

6 COMMISSIONER KOLBECK: Sure. How recognizable  
7 is this stuff? I mean, would a backhoe operator see it?  
8 If you were taking an aerial view, could you see it? How  
9 are the backhoe operators or the people out in the field  
10 going to be able to identify these things that you've  
11 identified? How would you suggest they do it? Do you  
12 suggest training, or what would you suggest?

13 THE WITNESS: Well, the survey, one would hope  
14 that the on-the-ground survey that they're currently  
15 doing now of the corridor, one would hope that they would  
16 pick up most of what's in there.

17 The National Historic Preservation Act or  
18 Section 106 requires that the federal agency make a  
19 reasonable good-faith effort to identify historic  
20 properties. That doesn't mean that they have to find  
21 100 percent of everything.

22 Would it be difficult for a backhoe operator to  
23 find something that was missed by an archeologist? I  
24 would suspect so.

25 COMMISSIONER KOLBECK: Okay. I know when I was

1 on the city council in Brandon we found some remains of  
2 some Native Americans, and that actually turned the  
3 ground red. So I know that -- but that backhoe operator  
4 had been trained at some time to stop excavation.

5 Do you think that -- and then they had to stop  
6 what they were doing. Are there safeguards put in place  
7 that if they do find something, they have to stop  
8 construction; correct? Is that a state law, or is that a  
9 federal law?

10 THE WITNESS: There will be provisions or there  
11 currently are provisions within the P.A. or draft P.A.  
12 for their -- for folks to stop work if any kind of  
13 cultural items are found. So.

14 And just so you're aware, we do have a state law  
15 that protects human remains. Whereas, our state  
16 preservation law does not -- does not. But we do have a  
17 state law that prohibits damaging or destroying human  
18 remains.

19 COMMISSIONER KOLBECK: Okay. And that's  
20 probably what came into play from the experience that I  
21 had was they stopped construction. They got off. They  
22 roped it off. They called the -- I mean, there was a  
23 certain amount of time when they had to remove them  
24 before they could continue.

25 THE WITNESS: Yeah. Yes.

1 COMMISSIONER KOLBECK: That's exactly what I  
2 needed to know. Thank you.

3 CHAIRMAN JOHNSON: Thank you. Do you know the  
4 time line for a decision by the U.S. Department of State?

5 THE WITNESS: Oh, the time line. I do not.

6 CHAIRMAN JOHNSON: I should have waved my hand  
7 or something. Sorry. It is difficult. You don't know  
8 where the voices are coming from.

9 Geomorphic study, tell me -- geomorphologic  
10 study. Can you tell me more about that?

11 THE WITNESS: I can in general. Typically --

12 CHAIRMAN JOHNSON: Anything beyond that might  
13 not have been received by the asker anyway so that will  
14 be fine.

15 THE WITNESS: In general the geomorph studies  
16 are used to identify deeply buried deposits. Typically  
17 along -- and this is what I know of them. Typically  
18 along areas where there's a stream and you have the --  
19 the channel as it changes course, there could be -- there  
20 could be deposits, archaeological deposits, that are  
21 covered by sediment as the -- as the rivers or the  
22 streams change.

23 And so there are -- my understanding is there  
24 are -- there are high potential or high probability areas  
25 to look for near stream crossings and areas like that

1 that have the potential for deeply buried deposits. And  
 2 so that the study would identify those areas and then  
 3 they could be tested.  
 4 CHAIRMAN JOHNSON: And so was your  
 5 recommendation to the Department of State to conduct such  
 6 a study across the entire affected area?  
 7 THE WITNESS: Yes.  
 8 CHAIRMAN JOHNSON: Okay. Thank you very much.  
 9 Thank you, Mr. Smith.  
 10 MR. SMITH: Other Commissioner questions?  
 11 Staff, do you have redirect?  
 12 MS. SEMMLER: No.  
 13 MR. SMITH: Applicant, any follow up on the  
 14 Commissioner?  
 15 MR. MOORE: No. Thank you, Mr. Smith.  
 16 MR. SMITH: How about Dakota Rural Action?  
 17 MR. BLACKBURN: No. Thank you.  
 18 MR. SMITH: You're excused. Thank you very  
 19 much.  
 20 Staff, please proceed.  
 21 MS. SEMMLER: Thank you. I'd like to call  
 22 Mr. Tom Kirshenmann to the stand, please.  
 23 (The witness is sworn by the court reporter)  
 24  
 25

1 DIRECT EXAMINATION  
 2 BY MS. SEMMLER:  
 3 Q. Good morning. Could you please introduce yourself  
 4 to the Commission and give us an idea of your background  
 5 and where you work.  
 6 A. **Good morning. Tom Kirshenmann. I work for**  
 7 **South Dakota Department of Game, Fish & Parks, and I**  
 8 **serve as our chief of terrestrial resources within the**  
 9 **Division of Wildlife.**  
 10 **A brief background of myself. A South Dakota**  
 11 **native, grew up in a rural, small town up in north central,**  
 12 **Eureka, in McPherson County and around agriculture my**  
 13 **entire life.**  
 14 **Graduated from South Dakota State University both**  
 15 **undergrad and graduate degree in wildlife fishery**  
 16 **sciences and management. Worked 10 years as a biologist**  
 17 **for NGO Pheasants Forever. Had the opportunity to cover**  
 18 **two states of Illinois and Indiana for five years and**  
 19 **South Dakota and Wyoming for an additional five years.**  
 20 **January 2005 joined the Department of Game, Fish &**  
 21 **Parks, served three years as our senior upland game**  
 22 **biologist and then served one year as our game**  
 23 **administrator and about a year ago currently took over**  
 24 **the position that I reside in as chief of terrestrial**  
 25 **resources.**

1 Q. And did you write and submit prefiled testimony in  
 2 this matter?  
 3 A. **Yes.**  
 4 Q. And do you see it beside you?  
 5 A. **Yes.**  
 6 Q. If I asked you all those questions today, would you  
 7 answer them the same?  
 8 A. **Yes.**  
 9 Q. Please provide us with a summary of your testimony.  
 10 A. **I guess in summary myself and staff within the**  
 11 **terrestrial resource section and some of our staff**  
 12 **biologists that typically do a lot of environmental**  
 13 **review type projects, we probably took the concept of**  
 14 **looking at a landscape level instead of real localized**  
 15 **specific areas.**  
 16 **And basically a summary, just kind of bringing**  
 17 **forward some considerations from a landscape perspective**  
 18 **from some bigger areas of sensitive habitat from that**  
 19 **sage brush habitat up there in the northwest corner of**  
 20 **the state to other locations of crossing and repairing**  
 21 **areas, fragmentation or disturbance of native prairie out**  
 22 **there when we think of western South Dakota.**  
 23 **So basically the considerations we brought forward**  
 24 **in this testimony was from more of a landscape level**  
 25 **versus real local specific locations.**

1 Q. And to that end you had some recommendations, and  
 2 those are all submitted in your testimony; correct?  
 3 A. **That is correct.**  
 4 MS. SEMMLER: No further questions.  
 5 MR. SMITH: Applicant.  
 6 MR. MOORE: I don't have any questions at this  
 7 time. Thank you.  
 8 MR. SMITH: Dakota Rural Action.  
 9 MR. BLACKBURN: Just a few. Thank you.  
 10 CROSS-EXAMINATION  
 11 BY MR. BLACKBURN:  
 12 Q. Some of the landowners -- were you here last night  
 13 for the public hearing?  
 14 A. **I was here for part of the day yesterday but not**  
 15 **when any landowners were present.**  
 16 Q. Okay. Thanks. Some of the landowners expressed  
 17 concern about their ability to hunt and perform predator  
 18 control during construction of the pipeline. And other  
 19 ones have expressed concerns about native prairies,  
 20 native grasslands, and those sorts of things.  
 21 Have you discussed any of those concerns with any  
 22 landowners?  
 23 A. **I have not, no.**  
 24 Q. Have you reviewed any of the prior Commission  
 25 hearings from last spring where similar kinds of concerns

1 were discussed?

2 **A. I did not, no.**

3 **Q.** Have any of those concerns been relayed to you in  
4 any form?

5 **A. To this point, no.**

6 MR. BLACKBURN: Thank you. No further  
7 questions.

8 MR. SMITH: Commissioner questions.

9 COMMISSIONER KOLBECK: Yes. Are you the only  
10 person from the Game, Fish & Parks who's been involved  
11 with the Keystone XL Project?

12 THE WITNESS: No. In fact, there have been  
13 several of our staff both within the terrestrial section  
14 and our aquatic section that I know over the course of  
15 the last year, probably year and a half, have been in  
16 consultation and conversations with folks on the  
17 Keystone Project, talking about several things that we  
18 mentioned in the testimony here from crossing river  
19 repairing areas to identifying some individual species  
20 that they talked about.

21 So over the past year to year and a half several  
22 of our staff have been in contact and consultation and  
23 visiting with folks on this particular project.

24 COMMISSIONER KOLBECK: When you say folks would  
25 some of those be landowners?

1 THE WITNESS: I cannot say that they were  
2 visiting with landowners. What I can say is they've had  
3 conversations with folks on the Keystone Project itself  
4 from TransCanada or some of their consultants that they  
5 probably have contracted to be part of the project.

6 COMMISSIONER KOLBECK: Okay. And when some of  
7 your stuff talks about 800 acres, obviously you're not  
8 concerned with just state land; you're concerned about  
9 the entire landscape of South Dakota?

10 THE WITNESS: That's correct. That's correct.

11 COMMISSIONER KOLBECK: Okay. Someone had  
12 mentioned last night in the public comment about a  
13 burying beetle.

14 Can you tell me what that is?

15 THE WITNESS: I'm by no means the expert in  
16 burying beetle. And what I do know, the brief that I do  
17 know there is an area down in Tripp County where it has  
18 been identified as the habitat and area where the  
19 American Burying Beetle has been found. It's an  
20 endangered species.

21 I think from the standpoint of our department  
22 and our staff, we haven't been directly involved with  
23 that because essentially it's been handled by the  
24 U.S. Fish & Wildlife Service because of that designee of  
25 it.

1 COMMISSIONER KOLBECK: And the South Dakota  
2 Game, Fish & Parks works hand in hand with the federal?

3 THE WITNESS: That is correct. I mean, we are a  
4 collaborative partner with them on various things. We  
5 work with them on various species. This could be one of  
6 them.

7 But based on the status of it, it would be the  
8 U.S. Fish & Wildlife Service that would be handling this  
9 particular one.

10 COMMISSIONER KOLBECK: Okay. Thank you.

11 MR. SMITH: Other Commissioner questions?

12 CHAIRMAN JOHNSON: I would just want to correct  
13 the record. Mr. Kirshenmann said he was from a real  
14 small town of South Dakota and proceeded to say Eureka.  
15 And I think by definition a real small South Dakota town  
16 has to be one at least half the people in the room  
17 haven't heard of. So I don't think he's from a real  
18 small South Dakota town.

19 THE WITNESS: I stand corrected.

20 MR. SMITH: Any other Commissioner questions? I  
21 just had one. And maybe you say in here somewhere but  
22 you mention the Least Tern. And you give a time frame  
23 for the Bald Eagle, but I don't see one for the Least  
24 Tern.

25 Is there an applicable time guidance on that if

1 the Commission were to adopt such a thing?

2 THE WITNESS: Sure. I believe there would be,  
3 and it would probably be somewhere in that ballpark. I  
4 do not have those exact dates. We could sure get that  
5 information if that's something that you would request.

6 There would be that specific time frame during  
7 that late spring during those summer months where it is  
8 that main time frame of nesting of those particular bird  
9 species as well. But we can sure get that information to  
10 you if that would be something you would request.

11 MR. SMITH: Maybe unless someone here has an  
12 objection, perhaps it would be -- and, again, I'm not  
13 prejudging what the Commission may or may not do, but in  
14 the event you have a recommendation if the Commission  
15 were to decide to adopt that, it might be useful to have  
16 some guidance to what kind of time frames we're dealing  
17 with.

18 THE WITNESS: We can sure do that.

19 MR. SMITH: Okay. Commissioner Kolbeck.

20 COMMISSIONER KOLBECK: Mr. Kirshenmann, do you  
21 think that after the mitigation process has been done and  
22 everything has been turned back, do you think that the  
23 wildlife habitat of South Dakota will be affected by this  
24 pipeline?

25 THE WITNESS: I think that's to a certain degree

1 very difficult to judge at this point in time. You know,  
 2 one of the things that we -- or I brought forward in the  
 3 testimony is that, you know, when you have that  
 4 construction phase when that ground -- if I may, is going  
 5 to be disturbed that recommendation to come to plant  
 6 native species or native species to that particular area,  
 7 even in that process there's so many other factors versus  
 8 just restoring it to the native species from what the  
 9 climate and what the conditions are going to be from  
 10 precipitation to all of those things that could  
 11 ultimately affect a little bit somewhat of how much it  
 12 does come back to what it was before that disturbance.

13 And, hence, why we brought forth the  
 14 recommendation of trying to focus on restoring with those  
 15 native plant species, in particular where that ground is  
 16 disturbed.

17 So, you know, for the most part any time that  
 18 you do that it's going to be back to probably as close as  
 19 you're going to -- as it was before. Because it's --  
 20 it's almost impossible to make exactly as it was prior to  
 21 any type of disturbance.

22 No different when we do any type of grassland or  
 23 native prairie restoration type projects that we're  
 24 involved with even working with landowners. You can  
 25 never do it exactly as it was once it's been disturbed.

1 But this day and age with the technology and the  
 2 plant species that are available out there a very good  
 3 job can be done of restoring it to as close as it was.  
 4 And from the bigger picture of overall habitat, again,  
 5 what I had mentioned was my biggest concern was that  
 6 fragmentation of the landscape of habitat.

7 But in this case where you're talking about  
 8 something going underground and then being restored over  
 9 the top, I think there would be very minimal.

10 COMMISSIONER KOLBECK: All right. Thank you.

11 THE WITNESS: Thank you.

12 MR. SMITH: Any other Commissioner questions?  
 13 Staff?

14 MS. SEMMLER: Just one quick clarification.

15 REDIRECT EXAMINATION

16 BY MS. SEMMLER:

17 **Q.** As Mr. Blackburn indicated, there was some consumer  
 18 concern and landowner concern regarding the areas that  
 19 Department of Game, Fish & Parks are experts on.

20 You're not aware of any landowners having contacted  
 21 your office directly. But with that being said,  
 22 certainly you have people within your office that can  
 23 help with those questions?

24 **A. Yes. I am not aware of any landowners contacting**  
 25 **our department directly. But we most definitely have**

1 **staff on board that can provide technical assistance,**  
 2 **guidance to any type of habitat or grassland restoration**  
 3 **type efforts as well as we have staff available that are**  
 4 **experts in aquatic areas as well when it would come to**  
 5 **repairing our river type situations as well.**

6 MS. SEMMLER: Nothing further. Thank you.

7 MR. SMITH: Applicant, follow up.

8 MR. MOORE: Thank you, Mr. Smith.

9 RECROSS-EXAMINATION

10 BY MR. MOORE:

11 **Q.** Mr. Kirshenmann, you talked a little bit about  
 12 Least Terns. In addition to the Least Tern, are there  
 13 other federal species that are covered by the biological  
 14 assessment that is being completed by the Department of  
 15 State and by the United States Fish & Wildlife Service?

16 **A. The only one that would come to my mind -- and there**  
 17 **might be others. I mentioned the Least Tern. The other**  
 18 **might be the Piping Plover is another one. And typically**  
 19 **those two are associated because of the similar habitats**  
 20 **they use for nesting. So that might be an additional**  
 21 **bird species that would be looked at as well.**

22 **Q.** And is it your understanding that the Department of  
 23 State may impose or make recommendations as a result of  
 24 the biological assessment that will, in fact, be binding  
 25 on TransCanada?

1 **A. I guess I cannot say one way or another on that,**  
 2 **sir.**

3 MR. MOORE: Okay. Thank you. That's all I  
 4 have.

5 MR. SMITH: Mr. Blackburn, any follow up?

6 MR. BLACKBURN: No follow up. Thank you.

7 MR. SMITH: Okay. I think you can be excused  
 8 then.

9 MS. SEMMLER: Excuse me. I'd like to call  
 10 Mr. Brian Walsh to the stand, please.

11 (The witness is sworn by the court reporter)

12 DIRECT EXAMINATION

13 BY MS. SEMMLER:

14 **Q.** Good morning. Could you please introduce yourself  
 15 to the Commission and tell us a bit about what you do and  
 16 your experience here with the State.

17 **A. My name is Brian Walsh. I'm a hydrology specialist**  
 18 **with the South Dakota Department of Environment and**  
 19 **Natural Resources. I started with the department in June**  
 20 **of 2003.**

21 **I have a B.S. Degree from Creighton University, and**  
 22 **I'm the department's project coordinator for the**  
 23 **hazardous material pipelines in the state.**

24 **Q.** And did you review the portions of the Application  
 25 that pertained to your role here with the State?

1 **A. I have read the Application, yes.**  
 2 **Q.** And did you write and submit prefiled testimony on  
 3 this matter?  
 4 **A. Yes, I did.**  
 5 **Q.** And do you see it there before you?  
 6 **A. I do.**  
 7 **Q.** And if I asked you those -- if I asked you those  
 8 questions today, would you answer them the same?  
 9 **A. I would with one addition. Under the question of**  
 10 **"Would your agency have jurisdiction over Keystone XL,"**  
 11 **were TransCanada Keystone to develop work camps for their**  
 12 **staff and develop a water supply and water system and**  
 13 **waste water treatment, they would fall -- potentially**  
 14 **fall under regulations of the department from the Water**  
 15 **Right Program, under the Drinking Water Program, and**  
 16 **under the Surface Water Quality Program for their waste**  
 17 **disposal, waste water disposal.**  
 18 **But the specifics of those would depend on the size**  
 19 **and design of the system.**  
 20 **Q.** Why don't you please give us then a brief summary of  
 21 the testimony that you did submit.  
 22 **A. Basically my testimony explains my role in the**  
 23 **pipeline process for the agency, how I serve as the**  
 24 **coordinator, as the primary point of contact for**  
 25 **TransCanada. I represent the department at public**

1 **meetings.**  
 2 **It discusses the contacts I have had with**  
 3 **TransCanada for this project, the meetings I've attended,**  
 4 **and it in general discusses the jurisdictions the**  
 5 **department would have over the Keystone XL Project.**  
 6 MS. SEMMLER: I have no further questions.  
 7 MR. SMITH: Applicant.  
 8 MR. MOORE: Thank you, Mr. Smith.  
 9 CROSS-EXAMINATION  
 10 BY MR. MOORE:  
 11 **Q.** Mr. Walsh, my name is James Moore. I'm one of the  
 12 lawyers representing the Applicant.  
 13 You mentioned on page 7 of your direct testimony the  
 14 issue associated with the City of Colome source water  
 15 protection area. And you recommended a reroute.  
 16 Since making that recommendation are you aware that,  
 17 in fact, TransCanada has rerouted the pipeline so that it  
 18 does not cross the City of Colome's source water  
 19 protection area?  
 20 **A. Yes. I'm aware of that.**  
 21 **Q.** And with respect to the other issue on page 7  
 22 related to the location of a proposed pump station in  
 23 Jones County approximately 600 feet from a house, are you  
 24 aware that that pump station has been relocated?  
 25 **A. Yes. I'm aware of that.**

1 **Q.** And do you have any remaining concerns about either  
 2 of those issues?  
 3 **A. No, I do not.**  
 4 MR. MOORE: Thank you. That's all I have.  
 5 MR. SMITH: Dakota Rural Action.  
 6 MR. BLACKBURN: Thank you.  
 7 CROSS-EXAMINATION  
 8 BY MR. BLACKBURN:  
 9 **Q.** I have a quick question about the Department's  
 10 review of the Oil Spill Response Plan, which is similar  
 11 to essentially what will be identical to the federal  
 12 Emergency Response Plan.  
 13 I know the Commission has previously expressed  
 14 concern about how that would -- about public involvement  
 15 in that plan.  
 16 Has the department at this date determined what  
 17 process it will use for review or approval of that Oil  
 18 Spill Response Plan that you've testified about?  
 19 **A. The process is that we receive it and review it**  
 20 **internally and comment.**  
 21 **Q.** Will there be any opportunity for public comment on  
 22 that plan?  
 23 **A. Not that I know of.**  
 24 MR. BLACKBURN: Thank you. No further  
 25 questions.

1 MR. SMITH: Commissioner questions?  
 2 COMMISSIONER HANSON: Mr. Smith.  
 3 Mr. Walsh, you were asked if you had any  
 4 remaining concerns pertaining to those two specific items  
 5 that you had addressed just a few minutes ago by counsel.  
 6 Do you have any concerns with pipeline routing  
 7 at this point in any areas?  
 8 THE WITNESS: No, I do not.  
 9 COMMISSIONER HANSON: Thank you.  
 10 Thank you, Mr. Smith.  
 11 MR. SMITH: Other Commissioner questions of  
 12 Mr. Walsh?  
 13 CHAIRMAN JOHNSON: Mr. Walsh, the response plan  
 14 that your department is required to review under state  
 15 law, would that be made available to citizens who  
 16 requested a copy?  
 17 THE WITNESS: For the Keystone XL Pipeline it  
 18 hasn't been submitted yet, but the oil response plan for  
 19 the Keystone base has been submitted. The Applicant did  
 20 request that that document be kept confidential, and our  
 21 ability to do that is still under review by management  
 22 and attorney staff.  
 23 At this time no one has requested to view a copy  
 24 of that document.  
 25 CHAIRMAN JOHNSON: Has your department

1 considered asking the Applicant to make a redacted  
 2 version available in a nonconfidential form?  
 3 THE WITNESS: Not at this time.  
 4 CHAIRMAN JOHNSON: Okay. Thank you. Thanks,  
 5 Mr. Smith.  
 6 MR. SMITH: Commissioner Kolbeck.  
 7 COMMISSIONER KOLBECK: Yes. Thank you for being  
 8 here, Mr. Walsh.  
 9 You spoke of ground water quality with the  
 10 camps. I think water and sewer treatment.  
 11 THE WITNESS: Sure.  
 12 COMMISSIONER KOLBECK: Does any of that concern  
 13 you? Is there -- is this something off the wall or out  
 14 of the normal, or are you -- do you think that the DENR  
 15 can fully compensate that?  
 16 THE WITNESS: I think we have the regulations in  
 17 place to deal with a camp of that nature.  
 18 COMMISSIONER KOLBECK: Will this pipeline in any  
 19 way tax the DENR in your opinion that -- maybe go into a  
 20 realm that they're not familiar with or haven't handled  
 21 in previous years?  
 22 THE WITNESS: No. I don't believe so.  
 23 COMMISSIONER KOLBECK: Okay. Thank you.  
 24 MR. SMITH: Any other Commissioner questions?  
 25 Staff.

1 REDIRECT EXAMINATION  
 2 BY MS. SEMMLER:  
 3 **Q.** One question. You indicated that no one at this  
 4 time has requested a copy of the Emergency Response Plan.  
 5 And although you also did indicate that you're unsure if  
 6 public comment will be available, has anyone asked to  
 7 publicly comment or asked for a hearing?  
 8 Has there been a request --  
 9 MR. BLACKBURN: I'm going to object. She's  
 10 characterizing the witness's testimony incorrectly. He  
 11 didn't say -- he said that no, there's no plans for a  
 12 response.  
 13 **Q.** Has anyone asked for public comments or a hearing?  
 14 THE WITNESS: No.  
 15 MR. SMITH: Thank you.  
 16 MR. SMITH: Is that all, staff?  
 17 MS. SEMMLER: Just wanted to verify that it's  
 18 not been determined yet if a hearing process will take  
 19 place.  
 20 MR. SMITH: Okay. Mr. Moore, do you have any  
 21 follow up?  
 22 MR. MOORE: No. Thank you.  
 23 MR. SMITH: Mr. Blackburn.  
 24 MR. BLACKBURN: Yes, I do. Thank you.  
 25

1 RECROSS-EXAMINATION  
 2 BY MR. BLACKBURN:  
 3 **Q.** A question was asked whether any of the activities  
 4 here would be new or beyond something new that the  
 5 department did not have prior experience with.  
 6 Has the department ever reviewed a Emergency  
 7 Response Plan in the past?  
 8 **A. It has.**  
 9 **Q.** For oil spills, oil spills from pipelines?  
 10 **A. I believe the answer to that is yes. For the**  
 11 **Magellan Pipeline system.**  
 12 **Q.** The law that was passed and required this was  
 13 done -- I believe it was passed in 2007 and the Magellan  
 14 spill was what date?  
 15 **A. I don't recall the date. But prior to 2007.**  
 16 **Q.** Was it in the 1980s? Can you give us a sense of  
 17 that?  
 18 **A. Well, it would depend on which Magellan release you**  
 19 **were discussing. There's been more than one.**  
 20 **Q.** Does the department have experts in oil spill  
 21 response in its employ?  
 22 **A. The department has staff that deals with hazardous**  
 23 **material response and a team that does that.**  
 24 **Q.** Uh-huh. And do most of those -- could you describe  
 25 generally the kinds of work that they do in terms --

1 because there's different sorts of oil spills and  
 2 different sizes of oil spills and certainly having people  
 3 that are experienced in spills from say gas station tanks  
 4 is a somewhat different thing than a spill from this  
 5 pipeline might be.  
 6 Could you describe what most of the prior experience  
 7 of the department has been?  
 8 **A. Although I work on petroleum releases, I'm going to**  
 9 **defer that response to Kim McIntosh who is the manager of**  
 10 **our spill response program.**  
 11 **Q.** Does the department intend to conduct any rule  
 12 making process to determine the -- any regulations  
 13 related to its obligation to review the Emergency  
 14 Response Plan for this pipeline?  
 15 **A. Not that I'm aware of.**  
 16 **Q.** Are there any requirements in law or in regulation  
 17 for the department to have a public hearing on this  
 18 matter?  
 19 **A. Not that I'm aware of.**  
 20 MS. SEMMLER: I object to the question and ask  
 21 that it be struck. It calls for a legal conclusion --  
 22 interpretation of laws.  
 23 MR. BLACKBURN: I think that the department is  
 24 fully aware knowing whether it's supposed to have a  
 25 public hearing or not. I'm not asking for any great

1 legal conclusion. If the department isn't aware when it  
 2 has to have a public hearing, that would be a surprise.  
 3 MS. SEMMLER: Mr. Walsh isn't an attorney for  
 4 the department.  
 5 MR. SMITH: I'm going to sustain the objection  
 6 because I do think it calls for a legal conclusion.  
 7 Mr. Walsh, you're a smart fellow, but I think  
 8 that's probably for your legal people to decide that.  
 9 MR. BLACKBURN: No further questions.  
 10 MR. SMITH: Are there any follow-up questions  
 11 from staff then?  
 12 MS. SEMMLER: Nothing further, Mr. Smith.  
 13 MR. SMITH: Any other questions from  
 14 TransCanada?  
 15 MR. MOORE: Nothing. Thank you.  
 16 MR. SMITH: Commissioners?  
 17 MR. SMITH: Mr. Blackburn?  
 18 MR. BLACKBURN: No. Thank you.  
 19 MR. SMITH: Okay. I think you're excused then,  
 20 Mr. Walsh.  
 21 THE WITNESS: Thank you, Mr. Smith.  
 22 MS. SEMMLER: Staff would ask Ms. Kimberly  
 23 McIntosh to take the stand.  
 24 (The witness is sworn by the court reporter)  
 25

1 DIRECT EXAMINATION  
 2 BY MS. SEMMLER:  
 3 **Q.** Could you please introduce yourself to the  
 4 Commission and give us an idea of what you do for the  
 5 DENR and a bit about your experience.  
 6 **A.** **My name is Kimberly Lorrene McIntosh, and everybody**  
 7 **calls me Kim. I currently work for the Department of**  
 8 **Environment and Natural Resources where I've been**  
 9 **employed for the last approximately 24 years.**  
 10 **I started out my work experience with the Geological**  
 11 **Survey when I was back in college at the University of**  
 12 **South Dakota where I received my degree in earth science**  
 13 **and anthropology.**  
 14 **My experience started with the Geological Survey**  
 15 **working on drill rigs, actually being a roughneck and**  
 16 **actually being a driller installing ground water**  
 17 **monitoring wells and doing assessment of sand and gravel**  
 18 **resources within the state.**  
 19 **Throughout the years I've worked in the department**  
 20 **in Pierre in a number of different capacities. I've**  
 21 **worked in our air quality program, our hazardous waste**  
 22 **program, and in our solid waste program.**  
 23 **I've worked with the Ground Water Quality Program**  
 24 **for the last approximately 17 years directing and**  
 25 **overseeing the cleanup of chemical spills and releases in**

1 **the state. And we refer to them as regulated substance**  
 2 **releases, which includes pesticides, petroleum, heavy**  
 3 **metals, solvents, that sort of thing.**  
 4 **Q.** And did you write and submit testimony on this  
 5 matter?  
 6 **A.** **Yes, I did.**  
 7 **Q.** And do you see it before you?  
 8 **A.** **Yes.**  
 9 **Q.** And if I asked you those questions today, would you  
 10 answer them the same?  
 11 **A.** **Yes, I would.**  
 12 **Q.** Give us, if you could, a summary of the testimony  
 13 you submitted.  
 14 **A.** **My summary really explains that, you know, what I do**  
 15 **for the Department of Environment and Natural Resources**  
 16 **now, my roles and responsibilities. Those include**  
 17 **directing the staff and overseeing the cleanup assessment**  
 18 **of all kinds of regulated substance releases.**  
 19 **We also do responding to releases. I also am**  
 20 **responsible for overseeing and directing the contractors**  
 21 **that the Department of Environment and Natural Resources**  
 22 **utilizes in the event that we have a release that there**  
 23 **are no responsible parties either willing, capable, or**  
 24 **able to perform the work and we have to hire resources to**  
 25 **mitigate and clean up those spills and releases.**

1 **Q.** In a case of a spill ultimately who is obligated to  
 2 clean up the spill?  
 3 **A.** **The State law is very specific that the person**  
 4 **responsible for the spill is responsible for cleaning up**  
 5 **that spill.**  
 6 **Q.** Does the DENR have resources to deal with a spill in  
 7 the unlikely event it would occur on a Keystone XL  
 8 Pipeline?  
 9 **A.** **The Department of Environment and Natural Resources**  
 10 **oversees a fund that I oversee, actually. It's called**  
 11 **the Regulated Substance Response Fund, and that fund is**  
 12 **what we consider our fund of last resort. But, however,**  
 13 **it is available to be used in the event that we have a**  
 14 **release where the responsible party or others are not**  
 15 **willing or able or capable of taking on the response and**  
 16 **actions have to be taken to immediately contain or**  
 17 **mitigate any sort of releases to keep it from spreading**  
 18 **or causing any sort of additional impact.**  
 19 **In my testimony I explained that that regulated**  
 20 **substance fund currently has a certain dollar amount in**  
 21 **it. That fund is sustained through penalties and fees**  
 22 **and the interest on that fund that we receive from**  
 23 **violations of our environmental laws. So that's how that**  
 24 **fund is fed.**  
 25 **Q.** And you feel comfortable that the staff within your

1 office would be able to handle a release if it would  
 2 occur?  
 3 **A. Yes, we do.**  
 4 MS. SEMMLER: No further questions.  
 5 MR. SMITH: Applicant, Mr. Koenecke.  
 6 MR. KOENECKE: Mr. Smith, I have no questions  
 7 for this witness.  
 8 MR. SMITH: Dakota Rural Action.  
 9 MR. BLACKBURN: Yes. Thank you.  
 10 CROSS-EXAMINATION  
 11 BY MR. BLACKBURN:  
 12 **Q.** Did you attend the public hearing last night?  
 13 **A. I did not. Brian Walsh from our office attended**  
 14 **that meeting.**  
 15 **Q.** Have you reviewed any of the public hearing  
 16 testimony in transcript form or other form to  
 17 determine -- to hear what landowner concerns are?  
 18 **A. I have had conversations with Brian Walsh concerning**  
 19 **the information that he's received in those public**  
 20 **hearings, and I've also reviewed some of the prefiled**  
 21 **testimony of some of the other people in the hearing.**  
 22 **Q.** Other people in the hearing being specifically?  
 23 **A. There were a couple of landowners that I reviewed**  
 24 **some of the information that they had submitted.**  
 25 **Q.** Uh-huh. And which landowners were those?

1 **A. I believe they were the Nemics (phonetic)?**  
 2 **Q.** The Niemis?  
 3 **A. Niemis. Sorry.**  
 4 **Q.** And they submitted one piece. That's correct?  
 5 **A. I thought I saw two pieces, one from a gentleman and**  
 6 **one from a woman, but maybe I have that confused.**  
 7 **Q.** Has the staff contacted any landowner other than  
 8 those individuals or had any communications from or to  
 9 any landowners other than those individuals?  
 10 **A. No one from my staff has contacted any of the**  
 11 **landowners, no.**  
 12 **Q.** Could you state the size of the spill fund that you  
 13 were referring to earlier?  
 14 **A. I don't know exactly how much is in the fund as of**  
 15 **today. But as you can see in my testimony, I believe**  
 16 **that back in November or whatever the date is there,**  
 17 **there was about \$2.7 million.**  
 18 **Q.** Uh-huh. And what's the largest oil spill to date  
 19 that your department has addressed?  
 20 **A. I don't have that information in front of me. I'd**  
 21 **have to look that up.**  
 22 **Q.** Could you give us an order of magnitude in terms of  
 23 the barrels? Are we talking 10 barrels, 100 gallons,  
 24 500 gallons, 1,000, 1,000 barrels?  
 25 **A. Well, on a number of oil releases -- our department**

1 **has other funds that we also utilize to investigate and**  
 2 **clean up petroleum releases. So utilizing this fund I do**  
 3 **not believe there's been any large petroleum releases.**  
 4 **Though there has been some very large petroleum releases**  
 5 **cleaned up using other funds that our agency has.**  
 6 **Q.** Uh-huh. Could you describe with -- and for any  
 7 purposes what other large petroleum releases the  
 8 department has reviewed for any purposes in South Dakota?  
 9 **A. Well, I can't tell you exactly how many petroleum**  
 10 **releases. We currently maintain a database of about**  
 11 **11,000 reported spills and releases in the state. And**  
 12 **our staff -- I've personally probably worked on a couple**  
 13 **thousand reported spills and releases.**  
 14 **Some of those are extremely large. I can personally**  
 15 **say that I worked on some that were 400 to 800,000**  
 16 **gallons in volume. And some of those are very small that**  
 17 **might be as small as, you know, 50 gallons so.**  
 18 **Q.** And those were petroleum releases, the very large  
 19 ones?  
 20 **A. Yes.**  
 21 **Q.** And which releases -- those sound like fairly large  
 22 releases. Where were they? Do you have any particular  
 23 memory?  
 24 **A. The Williams Pipeline -- we refer to it as Williams**  
 25 **Pipeline Renner release was 400 to 800,000 gallons of**

1 **refined petroleum product. We've had other fairly large**  
 2 **releases in Buffalo County that have been associated with**  
 3 **the oil fields and the production of oil up there.**  
 4 **Typically those releases are associated with fueling**  
 5 **facilities or fuel batteries, tanks where they're**  
 6 **collected.**  
 7 **We've had a number of other very large petroleum**  
 8 **releases. I guess when I think of large I think of into**  
 9 **the thousands of gallons. Ellsworth Airforce Base has**  
 10 **had a couple of very large petroleum releases. So we've**  
 11 **got quite a bit of experience dealing with fairly large**  
 12 **releases.**  
 13 **Q.** The Williams Pipeline you said was 400 to 800,000  
 14 gallons roughly?  
 15 **A. That's correct.**  
 16 **Q.** And was that a release underground, or did it come  
 17 above ground?  
 18 **A. The release originated underground and then**  
 19 **surfaced.**  
 20 **Q.** Uh-huh. And over what time did that release happen?  
 21 **A. You're stretching my memory a lot there. So -- I'm**  
 22 **trying to recall. I believe it must have occurred**  
 23 **over -- it was a pinhole leak in the pipe, and it must**  
 24 **have occurred over approximately a year's time frame.**  
 25 **Q.** Are you aware if the worst-case spill volume for

1 this pipeline?

2 **A. I can't recall what that volume number is right now.**

3 **But I do remember seeing a volume concentration.**

4 **Q.** Other people will correct me, but I believe it's

5 roughly 66,000 barrels which I believe is roughly 2 and a

6 half million gallons, something like that. Has the

7 department ever addressed or redressed any spill coming

8 anywhere close to that size?

9 **A. We have not had a release reported in this state of**

10 **that magnitude.**

11 **Q.** And the largest release that you're aware of that

12 you can think of right now is the Williams Pipeline,

13 which is a 400-to 800,000-gallon roughly release

14 underground but did not go above the surface? Except for

15 that it percolated ultimately?

16 **A. Yes. It surfaced. From a standpoint where we**

17 **actually can determine a volume we deal with a lot of**

18 **releases that are unknown concentrations. Particularly**

19 **from underground storage tanks or those types of**

20 **facilities. So yeah. That's correct.**

21 **Q.** Could you describe the typical kinds of spills that

22 you work with? I'm not saying now the maximum. Just the

23 typical kinds of spills that the department would be

24 addressing over the course of the year.

25 **A. We normally address about between 250 and 300 spills**

1 **a year. We deal with a large variety of spills.**

2 **Agricultural chemical spills. We deal with a number of**

3 **those every year where there are totes of chemicals that**

4 **are transportation type accidents. We deal with, you**

5 **know, semi accidents. We deal with very small releases**

6 **from, you know, manufacturing facilities. I mean,**

7 **there's just a very wide variety of releases each year.**

8 **Q.** And what's the average size of those spills?

9 **A. I don't know the answer to that.**

10 **Q.** Could you give us an approximation of the average

11 size?

12 MS. SEMMLER: You know, she already said she

13 doesn't know.

14 MR. SMITH: Overruled. He's just asking if you

15 know.

16 **A. I don't know because an underground storage tank**

17 **release which we deal with all the time has some, you**

18 **know, unknown volumes of chemical release so.**

19 **Q.** What are the typical sizes for underground storage

20 tanks?

21 **A. For the actual tanks?**

22 **Q.** Uh-huh. Yes.

23 **A. 5,000, 10,000, 20,000.**

24 **Q.** Uh-huh. And do you know offhand what the largest

25 underground storage tank leak release has been?

1 **A. In volume, no.**

2 **Q.** Okay. In other measures?

3 **A. Well, there are some underground storage tank**

4 **releases that occurred in the past that are extensive.**

5 **The release has occurred and migrated quite some**

6 **distances so it may travel a block. It may travel two**

7 **blocks.**

8 **Q.** Are you also familiar with the budgets for

9 addressing these kinds of releases and spills?

10 **A. I'm going to answer no.**

11 **Q.** So if I asked you what's the largest cost spill --

12 cost of a spill response in the state, you wouldn't have

13 any sense of how much money that had required?

14 **A. What I am aware of is I'm aware of some of the costs**

15 **associated with some of the larger releases and cleanups**

16 **that have occurred in the state. Sometimes those can be**

17 **upwards of \$4 million. I'm thinking the Renner thing was**

18 **over \$4 million. There's been some other large cleanup**

19 **sites that have been associated with manufactured gas**

20 **plants that have been in the -- the 3 to 4 million dollar**

21 **range as well.**

22 **Q.** Are you aware of the total volume of oil that would

23 be contained by this pipeline as it runs within the

24 borders of South Dakota?

25 **A. Just in general. I haven't sat down and calculated**

1 **or read any figures.**

2 **Q.** Are you aware of any other facilities in the state

3 other than the Keystone I pipeline that would be as large

4 in terms of their internal volume of oil?

5 **A. No, I'm not.**

6 **Q.** Would you give us a sense of how the size of the

7 Keystone Pipeline system in the State of South Dakota

8 compares to the other facilities that you regulate in

9 terms of volume of material that they transport or

10 contain?

11 **A. I don't know the answer to that.**

12 **Q.** Do you have a sense of whether this is an order of

13 magnitude larger than other facilities in the state?

14 **A. I don't know the answer to that.**

15 **Q.** Could you provide any quantification or any

16 description of the relative size of this facility

17 compared to other facilities that you regulate?

18 **A. It would be my opinion this pipeline is -- carries a**

19 **large volume or -- over a year's time would carry a large**

20 **volume of product. I do not know how that volume of**

21 **product compares with the other large tank farms or**

22 **facilities that already exist in the state.**

23 **Q.** Since you don't know that, do you have an opinion

24 about whether the current size of the spill release fund

25 that the Department has access to is adequate to respond

1 to Keystone -- a spill from a Keystone XL Pipeline?  
 2 **A. Our department maintains a Regulated Substance**  
 3 **Response Fund that can be utilized to mitigate and try to**  
 4 **eliminate additional releases.**

5 **I do not know whether that fund is significant -- is**  
 6 **sufficient enough if the entire pipeline ruptured at one**  
 7 **time. But the role of that fund is to be a stopgap**  
 8 **measure to get in and try to make sure that the release**  
 9 **doesn't spread, doesn't get any larger, and that we do**  
 10 **certain things to protect human health and further**  
 11 **impacts to the environment.**

12 **Q.** Has the department studied the -- any release  
 13 scenarios to determine whether that stopgap funding is  
 14 sufficient for particular releases -- for like a range of  
 15 possible releases from the pipeline?

16 **A. There were previous discussions during the first**  
 17 **pipeline hearings, and during the Pipeline Task Force**  
 18 **meeting that Brian Walsh headed up and Commissioner**  
 19 **Hanson was the chairman of that there was some**  
 20 **discussions about other large releases that occurred in**  
 21 **other states and the availability of fund both within the**  
 22 **state, through the responsible party and through the --**  
 23 **you know, the Federal Government, the Oil Pollution Act**  
 24 **and other means that may exist out there to deal with**  
 25 **releases if the responsible party refused to cooperate**

1 **and didn't do the requirements of the State.**

2 **Q.** Has the fund been increased in size since the advent  
 3 of the Keystone I Application or Keystone XL Application?

4 **A. If the fund has been increased in size, it's because**  
 5 **the fund has taken on interest on the money that it has**  
 6 **or it's been increased due to penalties our agency has**  
 7 **collected.**

8 **Q.** Has that increase in size been -- can you give us a  
 9 sense of how approximately percentage or an approximation  
 10 of how much it's increased in size? Are we talking  
 11 doubled in size or half or quarter or 10 percent or  
 12 5 percent or less or just a percent or 2?

13 **A. I don't know a percentage, but it is a small amount.**

14 **Q.** It's a small amount. So it's fair to say that the  
 15 state has not changed the size of its spill response fund  
 16 in response to the applications of TransCanada for the  
 17 pipelines that they've proposed?

18 **A. That's correct.**

19 MR. BLACKBURN: No further questions.

20 MR. SMITH: Commissioners, questions.

21 Mr. Rislov, do you have a question?

22 MR. RISLOV: Good morning. As I listened to the  
 23 questions that -- I guess it put a thought in my mind  
 24 that, you know, there may be some concern about the size  
 25 of the funds available to affect a clean up.

1 And if we look at a spill scenario with the XL  
 2 pipeline, what obligation would you expect the State or  
 3 Federal Government to take upon themselves to clean that  
 4 up as far as funds are concerned and what would you  
 5 expect from the pipeline itself?

6 THE WITNESS: I wouldn't expect any State or  
 7 federal funds to have to be utilized. We would expect  
 8 the cleanup to be initiated and completed by the  
 9 pipeline.

10 MR. RISLOV: I also had a question, and I  
 11 thought your answers were very interesting. I learned a  
 12 lot this morning about what you do. But a question about  
 13 your confidence in your ability to take care of a spill  
 14 on that pipeline if it should occur.

15 Just what is the level of confidence you have  
 16 that your agency can handle the matter for the citizens  
 17 of South Dakota?

18 THE WITNESS: Our agency's extremely confident  
 19 in our ability to oversee and direct the cleanup of any  
 20 sort of release from the pipeline facility.

21 MR. RISLOV: So the fact that a spill was 400 to  
 22 800,000 gallons or could be 2 and a half million gallons  
 23 really doesn't cause you that much concern?

24 THE WITNESS: No, it doesn't. Spills are a  
 25 concern based on a couple of factors. It doesn't

1 necessarily matter the size but it's the location of the  
 2 spill and the response of the responsible party or in  
 3 this case the pipeline to that incident.

4 MR. RISLOV: Thank you.

5 MR. SMITH: Commissioner questions? Chairman  
 6 Johnson.

7 CHAIRMAN JOHNSON: I want to make sure I  
 8 understand, Ms. McIntosh, what you mean. And I don't  
 9 want to mischaracterize your oral testimony so I'm going  
 10 to read your written and kind of come back to where I  
 11 think maybe there could be a disconnect.

12 On page 5 of your prefiled testimony you explain  
 13 that "DENR has the resources necessary to oversee the  
 14 assessment and clean up of a crude oil release and has  
 15 the resources to oversee a release from the Keystone XL  
 16 Pipeline."

17 Did you say earlier in response to questions  
 18 from Mr. Blackburn that you were unsure whether or not  
 19 the regulated substances release fund would be sufficient  
 20 to allow DENR to oversee clean up?

21 THE WITNESS: There's two issues here. One is  
 22 overseeing and directing and providing guidance,  
 23 direction, and assurance that the regulations of the  
 24 State of South Dakota are followed. Definitely the  
 25 department has the resources to do that.

1 However, the Regulated Substance Response Fund  
2 is only \$2.7 million. If there was an extremely large  
3 release and the responsible party and the pipeline -- the  
4 parties refused to do the work, it would depend on the  
5 volume of spill material released and the location of  
6 that release whether that response fund would be enough  
7 to completely clean it up.

8 CHAIRMAN JOHNSON: So as I look at that, I mean,  
9 is it too simplistic to say there's sort of a three tier  
10 system here? I mean, first -- and I'm talking about a  
11 typical spill. I'm not talking about some unusual set of  
12 circumstances. A typical release.

13 The operator would have resources. If that  
14 operator does not have resources, then there would be the  
15 State fund. If that State fund did not have resources, I  
16 think your testimony indicates that there is a federal  
17 fund that would have resources that in many cases could  
18 be used.

19 That fund I think you indicated has a billion  
20 dollar balance or so. Is that a proper characterization  
21 of those tiers?

22 THE WITNESS: Yes, that is. I mean, we -- in  
23 the State of South Dakota we require that the responsible  
24 party or the pipeline do the cleanup work. If they do  
25 not have sufficient resources or refuse to do that work,

1 then the state has some capabilities through other  
2 funding mechanisms and the Regulated Substance Response  
3 Fund to perform the cleanup work. In certain  
4 circumstances depending on the magnitude of the release  
5 and the location of the release there may be federal  
6 resources that would also be enacted to come in and clean  
7 that release up.

8 CHAIRMAN JOHNSON: And I don't want to  
9 mischaracterize your testimony, and so I'll just clarify  
10 that on Appendix N where you explain the Oil Spill  
11 Liability Trust Fund the 2009 balance is shown as  
12 approximately 1.1 billion. So I said 1 billion. At some  
13 point 100 million starts to make a difference I'm sure to  
14 somebody.

15 I think your testimony makes this pretty clear  
16 but because we've talked about Williams Renner and I want  
17 to make sure I've got it right, we're talking about -- I  
18 think you defined that as a very large spill -- I'm  
19 sorry, very large release and indicate that the state has  
20 had a number of very large releases.

21 And yet on page 4 of your written testimony you  
22 indicate that you're not aware of any permanent natural  
23 resource damage from a petroleum pipeline release. So  
24 even given the magnitudes of these spills in your  
25 professional opinion there has been no permanent natural

1 resource damage?

2 THE WITNESS: That's correct. Cleanup, you  
3 know, based on the State's standards that are in place  
4 and the cleanup requirements of our office, those spills  
5 have been cleaned up to state standards.

6 CHAIRMAN JOHNSON: Thank you very much.

7 MR. SMITH: Other Commissioner questions?  
8 Commissioner Kolbeck.

9 COMMISSIONER KOLBECK: Yeah. Kim, there's been  
10 a lot of talk about landowner liability.

11 Have you ever been -- seen a land where a  
12 landowner has been held responsible for a leak that  
13 wasn't their fault? In other words, if they had granted  
14 an easement to maybe the Magellan Pipeline or any  
15 pipeline in the State of South Dakota, it leaked on their  
16 land, has there ever been a landowner that was held  
17 responsible for the clean up?

18 THE WITNESS: Well, the thing that's kind of  
19 throwing me so I'm not answering your question as quickly  
20 as I might normally is has there ever been a release  
21 where a landowner's been responsible for cleaning it up  
22 and they didn't cause it?

23 COMMISSIONER KOLBECK: Yes.

24 THE WITNESS: Yes. There has been releases that  
25 have occurred on properties where the landowner --

1 because we didn't know who caused the release. There was  
2 nobody to pursue. There was nobody to go after. And the  
3 landowner would have had to then clean up that release  
4 that occurred because there was no one responsible for it  
5 that could be found.

6 And those cleanups have to occur on those sort  
7 of circumstances because they're causing a public  
8 nuisance or a public detriment, not just because of that  
9 particular piece of property necessarily, but there's a  
10 concern that it could spread and cause other sort of  
11 impacts.

12 COMMISSIONER KOLBECK: Sure. If this pipeline  
13 was to leak, it would be a pretty -- it would be a pretty  
14 sucker bet, though, on who caused it, wouldn't it?  
15 Because there's only -- if this pipeline was constructed  
16 and it's crude oil, I mean -- are you talking -- do you  
17 know what I mean?

18 THE WITNESS: If this crude oil pipeline was to  
19 leak, it would be quite easy to determine where the  
20 source of the release came from and what the cleanup  
21 requirements would then need to be. So --

22 COMMISSIONER KOLBECK: If memory serves me, the  
23 Magellan Pipeline, the reason that leaked so long was  
24 people passed blame from one company to the next but they  
25 were both handling the same substance; correct?

1 THE WITNESS: I think that was the Williams  
 2 Pipeline 12th Street facility where that sort of thing  
 3 went on where there was a number of different operators.  
 4 COMMISSIONER KOLBECK: Okay.  
 5 THE WITNESS: I don't recall that sort of  
 6 discussion occurring on the Renner release.  
 7 COMMISSIONER KOLBECK: Okay. So they admitted  
 8 it was their problem and took care of it on the Renner  
 9 release?  
 10 THE WITNESS: Oh, yes. Absolutely they  
 11 responded immediately.  
 12 COMMISSIONER KOLBECK: Okay. Have you found  
 13 with large projects like this that they don't doubt their  
 14 responsibility, or have you had to fight for them to  
 15 assume that responsibility?  
 16 THE WITNESS: I think we have a record of about  
 17 17 pipeline releases in the state, and on every  
 18 circumstance that I can recall the pipeline facility has  
 19 responded immediately to the incident.  
 20 Even in those cases where there was third-party  
 21 damage to the pipeline. They didn't sit back and wait  
 22 for the person who caused the damage to respond. The  
 23 pipelines take immediate actions because they want to  
 24 make sure that pipeline, one, the leak is stopped  
 25 immediately, there's no further damage, and my experience

1 with all of them is they've been extremely cooperative in  
 2 getting in there and doing what needs to be done.  
 3 COMMISSIONER KOLBECK: You testified in 2007.  
 4 How many spills have you dealt with since 2007? Do you  
 5 know?  
 6 THE WITNESS: You know, I really don't. We --  
 7 our program receives about 250 to 300 spills a year. And  
 8 so each year it depends on the types of spills coming in  
 9 and our workload as to how many each person on my staff  
 10 or each person in our program actually is the project  
 11 manager on.  
 12 COMMISSIONER KOLBECK: Okay. And just to  
 13 refresh, you do not think that there needs to be an  
 14 adjustment into the Super Fund to handle -- if this  
 15 pipeline was constructed?  
 16 MR. SMITH: By Super Fund, Commissioner, did you  
 17 mean the regulated substance?  
 18 COMMISSIONER KOLBECK: Yeah. The --  
 19 THE WITNESS: Well, utilizing the Regulated  
 20 Substance Response Fund for what we're anticipating that  
 21 there would be a need for would be to contain and to stop  
 22 any further spread of any material that would release.  
 23 That fund as it sits today appears to be sufficient.  
 24 COMMISSIONER KOLBECK: Okay. The reason I ask  
 25 is when you testified in 2007 I know that you were

1 comfortable with the amount. And now if we had two  
 2 different pipelines, if this one was constructed, I just  
 3 wanted to make sure that you were still comfortable with  
 4 that amount.  
 5 THE WITNESS: I guess I am.  
 6 COMMISSIONER KOLBECK: Is petroleum your biggest  
 7 spill product that you deal with in a year's time?  
 8 THE WITNESS: Yes. Petroleum's by far the  
 9 largest regulated substance that we deal with.  
 10 COMMISSIONER KOLBECK: Okay. And in your  
 11 testimony there was a question on what federal or state  
 12 standards exist for petroleum, and then you listed them.  
 13 Do you see that the federal and state systems  
 14 work together well? Do you see any need for anymore  
 15 authority under the state system, or do you feel that the  
 16 Federal Government and the State Government mesh pretty  
 17 well on this?  
 18 THE WITNESS: Well, as far as cleanup standards  
 19 for petroleum, the Federal Government only has criteria  
 20 they apply -- the Federal Government would not get  
 21 involved in a petroleum spill that was strictly upon  
 22 land. Their involvement would be if it hit navigable  
 23 waters or threatened navigable waters.  
 24 So, yeah, the State has adequate soil and ground  
 25 water quality, surface water quality standards to address

1 a release and require cleanup of those.  
 2 COMMISSIONER KOLBECK: But because of state law  
 3 and federal law, we put a lot of faith in PHMSA and other  
 4 regulatory agencies like that on the federal side.  
 5 Do you have faith that if a spill was to occur  
 6 and it maybe hit the Missouri River -- do you have faith  
 7 that the Federal Government has sufficient protections on  
 8 that?  
 9 THE WITNESS: Yes, I do. We work -- my program  
 10 people work very closely with federal entities such as  
 11 the Environmental Protection Agency and the Coast Guard.  
 12 And we recognize that their resources are massive. So if  
 13 there was a release that hit the Missouri River, we could  
 14 be assured that the Federal Government would be -- I'm  
 15 confident the Federal Government would be able to provide  
 16 any assistance that we felt was necessary.  
 17 COMMISSIONER KOLBECK: Thank you.  
 18 MR. SMITH: Other Commissioner questions?  
 19 Commissioner Hanson.  
 20 COMMISSIONER HANSON: Thank you, Mr. Smith.  
 21 Ms. McIntosh, thank you for your testimony  
 22 today. A few questions that may lead me into other  
 23 questions. I'm not certain how many questions I have.  
 24 But would you say that the Federal Oil Spill Liability  
 25 Trust Fund in general or the purpose at least of that

1 fund was for spills in navigable waterways?

2 THE WITNESS: That's correct.

3 COMMISSIONER HANSON: Are the funds available  
4 for other purposes?

5 THE WITNESS: I'm not aware that the funds are  
6 available for other purposes.

7 COMMISSIONER HANSON: Okay. And is that fund  
8 available if a -- if a -- I'll use the word guilty party,  
9 a responsible party I think is what is referred to. The  
10 responsible party cannot be found or there is some  
11 consternation and challenges in getting the responsible  
12 party to act?

13 THE WITNESS: The Oil Spill Liability Trust  
14 Fund's fairly specific on what it can be used for.  
15 However, the Federal Government and the Environmental  
16 Protection Agency does have other resources that if it  
17 was beyond the capabilities of the state, could be  
18 utilized -- or requested, I should say, is probably more  
19 appropriate.

20 COMMISSIONER HANSON: And in reference to the  
21 South Dakota's pipeline -- excuse me. Hazardous --  
22 Pipeline Hazardous Material Safety Fund, if I were to  
23 tell you that there were nine incidences from 1998 to  
24 2008, would that surprise you?

25 THE WITNESS: No.

1 COMMISSIONER HANSON: If I told you that it was  
2 approximately \$1.8 million was the total amount of  
3 damages, would that surprise you?

4 THE WITNESS: No. That wouldn't surprise me.

5 COMMISSIONER HANSON: Do you know of any  
6 fatalities from any of those incidents? Those nine  
7 spills were there any fatalities?

8 THE WITNESS: I'm not aware of any fatalities  
9 from a pipeline release.

10 COMMISSIONER HANSON: Any knowledge of any  
11 injuries from any of those?

12 THE WITNESS: Not from a petroleum pipeline  
13 release, no.

14 COMMISSIONER HANSON: Do you recall somewhat the  
15 causes of any of those?

16 THE WITNESS: I do recall that -- a large  
17 portion of the pipeline releases that have occurred in  
18 the state have been third-party damages to that pipeline.

19 COMMISSIONER HANSON: When you talk about 200  
20 spills could you give us just -- and petroleum spills.  
21 Could you give us a little bit better idea what you're  
22 referring to?

23 Are these gas pump type spills, someone left the  
24 gas pump going, or are these -- I know you gave some --

25 THE WITNESS: They could be all of the above.

1 They could be transportation accidents where tankers have  
2 spilled their entire loads, down to, you know, overfills  
3 at gas stations where, you know, 50, 100 gallons has run  
4 across the ground. So really every year it's a wide  
5 variety of the type of releases we deal with.

6 COMMISSIONER HANSON: When we're discussing the  
7 regulated -- the South Dakota Regulated Substance  
8 Response Fund, are you familiar with the dynamics of the  
9 monies going into and out of that fund?

10 THE WITNESS: Somewhat, yes.

11 COMMISSIONER HANSON: Are there monies that go  
12 into that fund on somewhat of an annual basis?

13 THE WITNESS: Those would be interest on the  
14 money that's already in the fund.

15 COMMISSIONER HANSON: Are there also fines that  
16 go into the fund?

17 THE WITNESS: And fines that are collected by  
18 our agency also go into that fund.

19 COMMISSIONER HANSON: Are there expenses to that  
20 fund somewhat on an annual basis then?

21 THE WITNESS: There are some extremely minor  
22 expenses that are associated with those funds. And then  
23 the other withdraw of those funds would be any of the  
24 contractor expenses that we have incurred through using  
25 the Regulated Substance Response Fund to perform a

1 response. Those would be the expenses, and those change  
2 from year to year.

3 COMMISSIONER HANSON: Did you participate in or  
4 do you have knowledge of the South Dakota Underground  
5 Pipeline Task Force meetings that took place?

6 THE WITNESS: Yes, I do. I provided some  
7 testimony and attended a number of those meetings.

8 COMMISSIONER HANSON: Are you familiar with the  
9 recommendations from that Task Force?

10 THE WITNESS: Yes, I am.

11 COMMISSIONER HANSON: Did that Task Force  
12 recommend that the fund be changed in any way?

13 THE WITNESS: My recollection was that it did  
14 not.

15 COMMISSIONER HANSON: There is one  
16 recommendation, item number 7, that states "The Task  
17 Force recommends the State Regulated Substance Response  
18 Fund be maintained and preserved as authorized in  
19 SDCL 34A-12 to ensure that State always has the capacity  
20 to provide for the cleanup of regulated substances during  
21 emergencies or, when necessary, to protect the public  
22 health, safety, welfare, or the environment."

23 Do you recall why that was put in place?

24 THE WITNESS: I believe it was put in place

25 based on some of the same discussions we're having today

1 about the State's ability to respond and assist in the  
2 assessment and oversight of a release should the  
3 responsible party refuse to cooperate or be unable to.

4 COMMISSIONER HANSON: Was there a concern by the  
5 Task Force that the state legislature might see this as a  
6 pot of money and take money out of it?

7 THE WITNESS: Yes.

8 COMMISSIONER HANSON: Is that a risk? Do we as  
9 a Commission need to be concerned that the state  
10 legislature may deplete or reduce this fund?

11 THE WITNESS: Yes.

12 COMMISSIONER HANSON: Thank you.

13 MR. SMITH: Are there any other Commissioner  
14 questions?

15 CHAIRMAN JOHNSON: Has there ever been a Motion  
16 in Appropriations to see dollars from that fund?

17 THE WITNESS: I have never sat in Appropriations  
18 and heard any of their direct requests for that fund, but  
19 I am aware that this fund is always looked at as a fund  
20 that sits out there with a fairly large balance.

21 CHAIRMAN JOHNSON: Thank you.

22 MR. SMITH: Commissioner Kolbeck.

23 COMMISSIONER KOLBECK: Just one follow up. How  
24 long have you been in charge of the -- are you in charge  
25 of the fund? I mean, is that your department's -- when

1 you go to budget hearings, when you go to Appropriations  
2 do you present that?

3 THE WITNESS: I present -- no. No. I provide  
4 the information to Secretary Perner. Secretary Perner is  
5 ultimately in our agency responsible for that fund.

6 COMMISSIONER KOLBECK: Okay. Would you have any  
7 knowledge to know if that fund has grown and for how many  
8 years or does it stay stagnant or is it going backwards?

9 THE WITNESS: It -- I don't know any specifics.  
10 I know it has grown somewhat. But the growth is very  
11 slow because, once again, it's only the interest on that  
12 money and the penalties our agency collects. And so it  
13 varies from year to year. It's based on the amount of  
14 money that is spent out of that fund.

15 And there's been a couple large expenditures to  
16 help the grown Super Fund site that have come out of  
17 there. So I would say that it slowly grows.

18 COMMISSIONER KOLBECK: Okay. Thank you.

19 MR. SMITH: Any other Commissioner questions? I  
20 just -- I have one. And I -- this might leak a little  
21 over into the legal area. Just if you know.

22 If you were to have to respond to a release from  
23 this pipeline or any other pipeline and expend dollars  
24 out of that fund, does the responsible party then become  
25 responsible as well for replacing the monies that you

1 expend?

2 THE WITNESS: Yeah. The law is very specific  
3 that we can pursue the responsible party for any of the  
4 fees that we have to expend out of the Regulated  
5 Substance Response Fund. And we can also put liens on  
6 the property of the responsible party for any of those  
7 costs that we also have not collected.

8 MR. SMITH: Okay. So in a sense the full  
9 monetary value of the pipeline property, per se, becomes  
10 an asset that's attachable by the State to satisfy that  
11 obligation.

12 THE WITNESS: That's my understanding, yes.

13 MR. SMITH: Thank you. And with respect to the  
14 Williams tank farm incident and the squabbling over who  
15 caused it, I can't remember, Kim, if you were around back  
16 then.

17 Were you around back then?

18 THE WITNESS: I was with the department.  
19 However, I wasn't in this position at the beginning of  
20 that -- of that incident.

21 MR. SMITH: Well, maybe I -- maybe you don't  
22 know then. If you know --

23 COMMISSIONER KOLBECK: That would have made you  
24 her boss then.

25 MR. SMITH: I would have been your boss.

1 THE WITNESS: That's correct.

2 MR. SMITH: And, in fact, I was in charge of  
3 that, cleaning that up.

4 CHAIRMAN JOHNSON: Counsel is testifying.

5 MR. SMITH: I'm trying not to testify. I'm  
6 trying -- but, I mean, the bottom line is the department  
7 went in and conducted an investigation of that situation;  
8 correct?

9 THE WITNESS: That's correct. There was a large  
10 investigation that was performed. Yeah.

11 MR. SMITH: And we did identify relatively  
12 quickly who -- the hydrology and the movement of product  
13 did demonstrate, in fact, who the responsible party was.

14 THE WITNESS: That's correct.

15 MR. SMITH: And once that was demonstrated did  
16 the responsible party step forward and carry out its  
17 obligations?

18 THE WITNESS: Yes, they did.

19 MR. SMITH: Thank you.

20 Staff, follow up.

21 MS. SEMMLER: None. Thank you.

22 MR. SMITH: Applicant.

23 MR. KOENECKE: None, Mr. Smith. Thank you.

24 MR. SMITH: Dakota Rural Action.

25

RECROSS-EXAMINATION

1  
2 **BY MR. BLACKBURN:**  
3 **Q.** The question about responsible party, would  
4 TransCanada always be the responsible party if there was  
5 an oil spill that resulted -- where oil spilled out of  
6 their pipeline?  
7 **A.** **The definition of a responsible party is the person**  
8 **who actually caused the release. So under 34A-12 it**  
9 **would say that whoever actually caused the release is**  
10 **responsible for the release.**  
11 **If you look at the legislation that was passed I**  
12 **believe it was last year, it specifically says that the**  
13 **pipeline would be responsible for their releases from**  
14 **their pipeline facility and would respond to that. It**  
15 **does not say that they would be the responsible party.**  
16 **Q.** So, for example, if a third-party contractor was  
17 driving the proverbial bulldozer, hits the pipeline,  
18 causes the leak, TransCanada has no liability whatsoever,  
19 no responsibility for that bulldozer operator, that  
20 operator or that company or whoever's in charge of that  
21 bulldozer would be the responsible party?  
22 **A.** **Under state law the bulldozer company or operator**  
23 **would be considered the responsible party. It's been our**  
24 **experience -- but now we have the new law that's in place**  
25 **that says that the pipelines will respond, take actions**

1 **necessary to clean up and mitigate those releases.**  
2 **But officially under 34A-12 the responsible party is**  
3 **the responsible party.**  
4 **Q.** Uh-huh. So just to be clear about this, what that  
5 means is that -- and I don't think there's any  
6 disagreement about this, but just to be clear, that  
7 TransCanada would be obligated to respond to the spill  
8 initially but then determining who pays for it would be  
9 another question and the responsible party would be  
10 liable to pay for the costs of the spill.  
11 **A.** **My experience has been that in some circumstances**  
12 **the pipeline facilities -- and I can't speak to this**  
13 **pipeline company, but the pipeline facilities may then**  
14 **pursue legal actions in court to some of their costs.**  
15 **Q.** And have the pipeline company -- or your experience  
16 with pipeline companies also defended themselves against  
17 the liability in court?  
18 **A.** **I'm sorry. I don't quite understand your question.**  
19 **Q.** In your experience have pipeline companies also gone  
20 to court to defend, you know, to -- defended themselves  
21 against liability in court for pipeline spills?  
22 **A.** **I'm not aware of any of those incidences.**  
23 **Q.** So to your knowledge the pipeline companies have  
24 never defended themselves in court for a liability for a  
25 pipeline oil spill in South Dakota?

1 **A.** **I'm sorry. I just -- I don't quite understand what**  
2 **you're asking me.**  
3 **Q.** Let me try this again.  
4 No. I'll just drop that. It's not worth it.  
5 Are you -- this is also just to be clear. I think  
6 we all know the answer, but just so it's on the record.  
7 May private entities seek recovery for private  
8 damages from an oil spill from the State of South  
9 Dakota's oil spill funds, oil spill response funds?  
10 **A.** **I'm not aware of any provisions in the law that**  
11 **would allow that.**  
12 **Q.** Thank you. Are you familiar with the location of  
13 federal oil spill response resources in South Dakota or  
14 in the Midwest?  
15 **A.** **I know that there was a coast guard operation that**  
16 **existed down in Yankton. That's been a couple of years**  
17 **ago. I have not updated. I haven't been updated on**  
18 **whether they still exist down there or not.**  
19 **Q.** Are you aware of any of the materials or equipment  
20 that the Federal Government has and where those materials  
21 and equipment would be located that would be available  
22 for use for -- in response to a spill in the navigable  
23 waters in South Dakota?  
24 **A.** **The U.S. Fish & Wildlife Service has some resources**  
25 **that would be available. But I'm not sure of the exact**

1 **locations of all of those. I would assume that some of**  
2 **these resources would be located at the dams.**  
3 **Q.** Can you generally describe the nature of those  
4 resources?  
5 MS. SEMMLER: I will object that we're well  
6 outside the scope of this expert's testimony.  
7 MR. BLACKBURN: She testified that she was  
8 comfortable with the Federal Government's ability to --  
9 MR. SMITH: Overruled. It's overruled. We  
10 don't --  
11 MR. BLACKBURN: If she doesn't know, that's  
12 fine. I just want to know.  
13 **A.** **I know that the U.S. Fish & Wildlife maintains**  
14 **resources such as boats and sorbent materials and pads**  
15 **that can be utilized in the event of a release at some of**  
16 **the dams. I am not aware of all of the equipment they**  
17 **may have in the state.**  
18 **Q.** And the size of the spills of that material could  
19 regress? Do you know the sense of the size -- is that  
20 made mostly for releases for boats, for example, an  
21 outboard motor gets dumped and go out and clean it up, or  
22 is that equipment the U.S. Fish & Wildlife Service has  
23 designed to handle a large oil spill?  
24 **A.** **I would not expect that they would have resources in**  
25 **South Dakota that would handle a large oil spill.**

1 **Q.** Are you aware of personnel the Federal Government  
 2 might have other than those U.S. Fish & Wildlife Service  
 3 people where federal employees would be -- who would be  
 4 responsible for handling oil spills, the location of  
 5 those people?  
 6 **A.** **There are a lot of federal agencies in the state**  
 7 **that handle their own types of oil spills that may occur,**  
 8 **but I'm not aware of any federal agency that has a large**  
 9 **supply of equipment or supplies that could deal with a**  
 10 **very large oil spill.**  
 11 **Q.** One last question. Are you aware of where those  
 12 resources are in the Midwest or within this part of the  
 13 country?  
 14 **A.** **Region 8 EPA is located in Denver. I know that that**  
 15 **federal agency has resources just as a number of the**  
 16 **other federal agencies have to deal with the response.**  
 17 **The other issue is the contractor support that**  
 18 **exists in the State of South Dakota to deal with oil**  
 19 **spill releases and the Hazmat teams that exist in the**  
 20 **state that can respond to oil spills and releases.**  
 21 **There's a number of those sort of teams that exist in the**  
 22 **state as well.**  
 23 **Q.** Little bit more. Hazmat teams that are under the  
 24 jurisdiction of specific cities and towns and municipal  
 25 government or county government, those kind of Hazmat

1 teams?  
 2 **A.** **That's correct.**  
 3 MR. BLACKBURN: No further questions.  
 4 MR. SMITH: Thank you. Staff, do you have any  
 5 follow up?  
 6 MS. SEMMLER: I don't have any follow up, no.  
 7 MR. SMITH: Okay. Applicant.  
 8 RECROSS-EXAMINATION  
 9 BY MR. KOENECKE:  
 10 **Q.** Ms. McIntosh, I have a single question for you. Are  
 11 you aware of any instance where a pipeline company sought  
 12 to recover costs of cleanup from a private individual  
 13 landowner in South Dakota?  
 14 **A.** **There was a release that occurred in -- I'm trying**  
 15 **to think if it's over by Mitchell or if it was closer to**  
 16 **Gann Valley where a pipeline was damaged by a third**  
 17 **party. And I understood that there were some discussions**  
 18 **about legal actions that may be taken.**  
 19 **I do not know whether they actually ended up in**  
 20 **court on that case.**  
 21 MR. KOENECKE: Thank you.  
 22 MR. SMITH: Commissioner Johnson.  
 23 CHAIRMAN JOHNSON: I'll apologize. I may be  
 24 beating a dead horse here, but I want to understand that  
 25 I understand your testimony.

1 Did you say that even in instances where the  
 2 pipeline company is not the responsible party, that they  
 3 would be responsible for responding initially to attempt  
 4 to minimize the release and environmental damage?  
 5 THE WITNESS: That's correct.  
 6 CHAIRMAN JOHNSON: Okay. Thank you.  
 7 MR. SMITH: I've got just one, and again you may  
 8 not know. But when we talk about navigable waters do  
 9 navigable waters also include waters that are tributary  
 10 to navigable waters such that the incident would  
 11 potentially impact a navigable water?  
 12 THE WITNESS: I'm going to have to defer that  
 13 question to Brian Walsh. He did a lot of research on  
 14 EPA's interpretation of navigable waters. And I know  
 15 that sometimes that definition changes.  
 16 So I would believe the answer is yes, but I  
 17 would prefer to let him answer that.  
 18 MR. SMITH: Well, and honestly I should scold  
 19 myself. That's a legal question probably and will leave  
 20 it at that. Thank you.  
 21 Are we done?  
 22 MR. BLACKBURN: Yes. Thank you.  
 23 MR. SMITH: Staff, any last questions?  
 24 MS. SEMMLER: No.  
 25 MR. SMITH: I think you may step down then,

1 Ms. McIntosh. And thank you very much.  
 2 Well, it's a quarter to noon. Is it time for a  
 3 break? I don't know what your schedule is I guess,  
 4 staff, in terms of contingencies or whatever of your  
 5 witnesses. Is this a good time for a break or a bad  
 6 time?  
 7 MS. SEMMLER: It is a good time for a break. We  
 8 have one more witness present today that can testify, and  
 9 our final witness cannot be available until after 3:30 I  
 10 believe it was.  
 11 MR. SMITH: Okay.  
 12 MS. SEMMLER: We'll need to deal with that  
 13 timing issue.  
 14 MR. SMITH: Mr. Blackburn.  
 15 MR. BLACKBURN: Yes. A couple issues with  
 16 regard to that. It depends on how the timing is. 3:30's  
 17 kind of late given that we assumed this would be  
 18 finishing up more quickly. So the final witness will be?  
 19 MR. SMITH: I think that's Mr. --  
 20 MR. BLACKBURN: Kenyon.  
 21 MR. SMITH: The tax person, right.  
 22 MR. BLACKBURN: We may not be able to remain for  
 23 that. So no disrespect. It's just a matter of our time.  
 24 MR. SMITH: I understand. Yeah.  
 25 MR. BLACKBURN: I'd also like to bring up

1 another housekeeping matter if I may, and that's related  
2 to the exhibits that we offered. And Dakota Rural Action  
3 would just like to withdraw those exhibits and we'll  
4 include them within public comment and the Commission can  
5 treat them as it sees fit.

6 MR. SMITH: Okay. Thank you very much. Well,  
7 with the exception of the one that we already received in  
8 evidence?

9 MR. BLACKBURN: Yes. Thank you.

10 MR. SMITH: Okay. We'll do that then.

11 CHAIRMAN JOHNSON: I don't know if it matters.  
12 If it's being withdrawn, it's being withdrawn. But, I  
13 mean, I had said yesterday and still believe if there are  
14 items in there that are admissible, I mean, I'd feel more  
15 comfortable having them be admitted. Because if they're  
16 of value to the record, they can't be of official value  
17 to the record if they're not in there.

18 MR. SMITH: Well, yeah. And if there are things  
19 that, you know, the Commission believes -- and  
20 Mr. Blackburn's going to -- as I understand it, you're  
21 going to submit them in the form of comments, right, to  
22 the record, to the overall administrative record?

23 MR. BLACKBURN: Yes. That's correct.

24 MR. SMITH: I mean, in other words, if I  
25 understand what you're saying, Commissioner, if we look

1 at any of that and at least if we think it's potentially  
2 viewable by the Commission under judicial notice  
3 standards, is that kind of the idea or --

4 CHAIRMAN JOHNSON: Well, I mean, I think  
5 Mr. Blackburn made his argument about documents that were  
6 provided to him through discovery by TransCanada.  
7 TransCanada made their argument. I'm not taking a side  
8 on that argument. But, I mean, the Commission hasn't  
9 ruled on it. Maybe some of those documents would be  
10 admissible.

11 I don't want to reopen a can of worms. If  
12 Mr. Blackburn is fine not having them in the record, I  
13 should probably be okay with that. But what if the  
14 Commission were to determine that it was, A, going to  
15 approve the pipeline but, B, one of the conditions was  
16 going to be further study on issue X?

17 And if we don't have anything in the record to  
18 identify that issue X requires a greater study, I mean --

19 MR. SMITH: Well, yeah. I mean, as of now --

20 CHAIRMAN JOHNSON: I'm not making any  
21 predetermination on any of those.

22 MR. SMITH: Mr. Blackburn has withdrawn his  
23 offer. I've got a couple of observations on that. One  
24 is I believe that in the event the Commission at some  
25 point in time believes that it requires additional

1 inquiry prior to making a decision, we've got until my  
2 recollection is around April 10 or thereabouts is our  
3 final drop dead date.

4 I guess it's always possible for the Commission  
5 to if they want to, to reopen the hearing, reopen the  
6 record, and request additional evidence if they -- if  
7 they so choose. I don't know of anything that would  
8 preclude you from doing that.

9 CHAIRMAN JOHNSON: I think that's understandable  
10 and somewhat unfortunate, but it is what it is. So thank  
11 you.

12 MR. SMITH: Any comment on that, Applicant?

13 MR. KOENECKE: No, Mr. Smith. Thank you.

14 MR. SMITH: Do you have any comment on my  
15 comment, Mr. Blackburn, or --

16 MR. BLACKBURN: No. Just to say that we are  
17 concerned about these issues. And as we've discussed  
18 yesterday, there may be other mechanisms and means to  
19 raise them both within the Commission and within the  
20 state.

21 And I'm just largely due to limited resources,  
22 you know, we would -- and the timing of all of this it  
23 turns out that some of the documents I have from  
24 TransCanada, they're fairly long, I was not able to scan  
25 in before I left here so I couldn't get them to you

1 before the end of this hearing.

2 And I think that given the nature of the  
3 documents and the nature of the requests that come with  
4 them that it would serve our purposes and I believe serve  
5 the Commission's concerns to have those documents be  
6 provided in other ways. And, you know, that I think  
7 would be simpler for all of us.

8 And we are -- landowners are definitely  
9 concerned about these issues, and it's not an indication  
10 of a lack of desire to work with the Commission on it but  
11 simply a judgment call about how to best do that.

12 MR. SMITH: Okay. Thank you. Well, with that  
13 then, the offer of exhibits other than the prefiled  
14 testimony of Ms. Tillquist is granted, and we'll proceed  
15 on that basis.

16 So then we'll be in recess until --  
17 Commissioners, give me directions.

18 CHAIRMAN JOHNSON: I would ask for the parties  
19 if they're -- well, and perhaps if DRA has to hit the  
20 road -- I was going to suggest starting at 2 o'clock so  
21 perhaps we didn't have a gap between the first witness  
22 and the second. But if that is disruptive to  
23 Interveners, then we can go in an hour and a half rather  
24 than --

25 COMMISSIONER KOLBECK: That was going to be my

1 recommendation was 2 o'clock too, but I agree with  
 2 Commissioner Johnson.  
 3 MR. SMITH: Yeah. In fact, I mean -- pardon me,  
 4 Mr. Blackburn?  
 5 MR. BLACKBURN: Excuse me. Just conferring  
 6 here. We are going to need to be moving on to another  
 7 event, and I think that it might be -- on the one hand we  
 8 don't want to have the Commission rush back from lunch  
 9 and do that on our behalf because we are concerned about  
 10 efficiency for the Commission's time and decision.  
 11 It might be best if we -- the Commission just  
 12 continue as it wishes to continue and then if we're not  
 13 able to, you know, attend, then we offer our apologies in  
 14 not being able to do so.  
 15 MR. SMITH: That's fair enough. I mean, you  
 16 know, I guess the other alternative if staff has just the  
 17 one remaining witness, would be to take it now and -- but  
 18 I have no idea what TransCanada may have in mind with  
 19 respect to a rebuttal, if any.  
 20 MR. KOENECKE: I've got a bacon double  
 21 cheeseburger in mind right now, Mr. Smith, but don't  
 22 worry about that. You should go and do what works for  
 23 you.  
 24 MR. BLACKBURN: The last witness is Mr. -- if we  
 25 could proceed with Mr. Madden if he's here. If people

1 have the time, I don't think it would necessarily take  
 2 that long, but if we have a few questions, that would be  
 3 helpful.  
 4 MR. SMITH: I don't know. Staff, do you have an  
 5 opinion?  
 6 MS. SEMMLER: If you could give me 10 minutes to  
 7 talk with the witness and take a bathroom break, we would  
 8 do it.  
 9 MR. SMITH: Well, I definitely need the  
 10 10 minutes myself. So, yeah. But it depends on what the  
 11 Commissioners want. I mean, it's your --  
 12 COMMISSIONER HANSON: Mr. Chairman, I'd suggest  
 13 we take a 10-minute break and then we take the witness.  
 14 MR. SMITH: Okay. Let's do that then. Roughly  
 15 5 after or so. Thank you.  
 16 (A short recess is taken)  
 17 MR. SMITH: Okay. We're back on the internet.  
 18 Reconvene the hearing in HP09-001, Keystone XL Pipeline.  
 19 We were in the middle of staff's direct case.  
 20 MS. SEMMLER: I'd like to call Mr. Michael  
 21 Madden.  
 22 (The witness is sworn by the court reporter)  
 23 DIRECT EXAMINATION  
 24 BY MS. SEMMLER:  
 25 Q. Good morning. Could you please -- or afternoon.

1 Could you please introduce yourself to the Commission and  
 2 tell us a bit about your background.  
 3 **A. Yes. My name is Mike Madden, Michael Madden. I'm a**  
 4 **retired college professor at -- I'm a retired college**  
 5 **professor from USD. I've been retired for about**  
 6 **11 years.**  
 7 **While I was there I was the director of an M.B.A.**  
 8 **program. And during the course of the last three decades**  
 9 **I've done a lot of research in the area of economic**  
 10 **impact analysis and market feasibilities and various**  
 11 **studies like that in all sectors of the South Dakota**  
 12 **economy.**  
 13 **Since my retirement a few years ago I moved to**  
 14 **Buffalo, Wyoming and have phased in to kind of a**  
 15 **semiretirement situation for a short while, and then I**  
 16 **now find myself in the Wyoming State Legislature. So I'm**  
 17 **kind of semiretired, and I do some research like this on**  
 18 **a considerable basis from time to time.**  
 19 Q. Did you write and submit prefiled testimony and  
 20 write a report in this matter?  
 21 **A. I did.**  
 22 Q. And you have those in front of you; correct?  
 23 **A. Yes, I do.**  
 24 Q. If I asked you those questions today, would you  
 25 answer them the same?

1 **A. There was one change. All of it would be the same**  
 2 **except for the question that has associated with it a**  
 3 **table and about two-thirds the way down the table there's**  
 4 **a section called Agriculture. And at the time I prepared**  
 5 **this prefiled testimony I had not done the field research**  
 6 **that was required in that area.**  
 7 **And I would now change in the Agricultural section**  
 8 **down there the direction of impact instead of None I**  
 9 **would say it's Positive. And in the area of Net Impact I**  
 10 **would say Significant, rather than Nonsignificant -- or**  
 11 **None Significant.**  
 12 **With the exception of that change, everything else**  
 13 **is as I would have answered it today.**  
 14 Q. And your study included site visits along the route  
 15 of the first TransCanada pipeline, and your report showed  
 16 economic benefits to those communities. Could you  
 17 explain your findings?  
 18 **A. Yes. What I did was I looked at -- first of all, I**  
 19 **guess as kind of a forerunner to how I approached this is**  
 20 **whenever you see a project like this it's the usual and**  
 21 **customary expectation is that the economic impacts are**  
 22 **most invariably positive. And social impacts are**  
 23 **sometimes mixed in nature.**  
 24 **And so to give me some idea of going out and doing**  
 25 **this survey work I talked to officials in the Wyoming Oil**

1 & Gas Commission that deal with the same kind of thing  
2 you people deal with her. Also talked to the Wyoming  
3 Pipeline Authority personnel and also the Wyoming  
4 Industrial Siting Council.

5 These people were helpful in directing me into the  
6 areas that needed to be pursued in addition to the  
7 economic impacts.

8 And the social impacts that I covered in addition to  
9 the economic impacts involved things like law  
10 enforcement, fire protection, emergency services, health  
11 services, and education services.

12 And with that kind of background I was able to draw  
13 up a survey instrument that I think gave me answers that  
14 are credible and realistic with respect to the first  
15 Keystone Pipeline Project up to the time -- at the time  
16 of the survey.

17 And the reason I was so confident in using that  
18 historical comparison methodology was because in this  
19 case the two projects are relatively close together  
20 timewise so you don't have a lot of big changes in social  
21 behavior in those few of years. And the other thing even  
22 more important was the fact that the same company -- and  
23 as we heard testimony on Monday, not only the same  
24 company but the same personnel within this company will  
25 be doing the basic management in the next pipeline.

1 So I expect that the kind of things that we found in  
2 the pipeline 1 or the earlier one is going to be  
3 reflective of what we would have coming up in the new  
4 one.

5 Q. In your opinion then does the current pipeline, the  
6 XL Pipeline, have potential to have positive economic  
7 impact in western South Dakota?

8 A. Yes. It does have the potential to have positive  
9 impact. But we have to realize that the impacts will be  
10 different. The situation in the first pipeline, as we  
11 all know, I think the company would almost agree that  
12 they had almost perfectly situated communities, more or  
13 less equally distant placed from north to south in the  
14 state that had adequate basic accommodations for the help  
15 and they could rely on and, likewise, the private sector  
16 could benefit by the economic impacts, the lodging and  
17 eating and drinking establishments experienced among  
18 other sectors.

19 In the situation that we have here in the Keystone  
20 XL is, you know, somewhat different in the sense that  
21 these towns, these levels of service are not available in  
22 the private sector so there's going to be some  
23 limitations on the net total economic benefit that will  
24 be experienced.

25 But yet because there's so few -- so much fewer

1 sales tax licenses or business entities in that part of  
2 the state, certainly the ones that are there and maybe  
3 the few that might start up as a result of this will  
4 experience individual, you know, business-by-business  
5 substantial increases.

6 As to what is contemplated now with the worker camps  
7 where eating facilities are presumably already  
8 incorporated in the plan and you've got living  
9 accommodations already provided, a lot of that economic  
10 benefit will not occur necessarily to the total degree,  
11 but the relative degree in these smaller communities will  
12 be substantial in my opinion.

13 To give you some kind of an index of the economic  
14 impact that occurred on the first one actually, it's a  
15 lot more difficult than it would normally be because, as  
16 we all know, that as we move from this beginning period  
17 to this first Keystone Project until we got to near the  
18 end of the construction we moved from a relatively  
19 prosperous economic -- national economic situation and  
20 thereby statewide situation to a very dramatic  
21 contraction in business activity.

22 But yet when you look at the three counties -- or  
23 four counties, which were Brown County is where Aberdeen  
24 is, Beadle County where Huron is located, you've got  
25 Davison County where Mitchell is, and Yankton, these are

1 the primary large cities who are experiencing these  
2 benefits, there's taxable sales and what I would regard  
3 some critical typical sectors that these type of workers  
4 would patronize.

5 In a net sense -- and you'll see on table 1 on page  
6 6 of my study that there was an increase of 1.1 percent  
7 sales in department stores. Eating and drinking  
8 establishment, 2.7 percent. And lodging, 5.6 percent.  
9 And this all happened in -- you know, as we moved from  
10 normal economic times to a very severe recessionary  
11 situation that admittedly isn't as bad in South Dakota as  
12 it is for a nation as a whole but still is significant.

13 And this is evidenced by the fact that other large  
14 populated counties in South Dakota actually had decreases  
15 over this March to July spending period in '08 and '09,  
16 decreases rather than increases in these same sectors.  
17 This would be, you know -- include other counties like  
18 Pennington County, for example, and Minnehaha.  
19 Minnehaha County and others of that type.

20 So it's fairly apparent that the economic stimulus  
21 was significant, although not, you know -- not dramatic.  
22 I mean, it was a manageable thing.

23 You know, and as I interviewed chambers of commerce  
24 people and others who were in a position to know the  
25 general climate of these communities, they said that it

1 couldn't have come at a better time. And I guess that  
2 certainly is true.

3 Q. And aside from economic impacts, you indicated  
4 earlier that you looked at a variety of segments. And it  
5 appears as if there was very little negative reaction in  
6 those segments, law enforcement, fire protection, health  
7 services, education, et cetera.

8 Is that an accurate statement?

9 A. It is an accurate statement in this case. But it's  
10 not -- you know, I can tell you this because of my  
11 experience in Wyoming, that not all pipeline projects are  
12 created equal when it comes to this social impacts.

13 When I had gotten, you know, a briefing from these  
14 three organizations that I talked about earlier I was  
15 somewhat scared of what I might find in this area.  
16 Because we've had -- you know, in Wyoming I don't know if  
17 some of you have probably seen an overlay map of  
18 Wyoming's pipelines. And it looks kind of like a spider  
19 web. And, you know, we've got pipelines that I don't  
20 even know if they know how many pipelines we've got.

21 But they're not trans continent type pipelines by  
22 and large. They're collection type pipelines, and  
23 they're smaller pipelines by and large. Although we do  
24 have some high pressure natural gas lines that are large  
25 by industry standards that are for exporting natural gas

1 out of the area.

2 So you really have a different technology in these  
3 oil fields, gas fields, carbon dioxide transfer  
4 pipelines, this kind of thing. It's smaller pipelines.  
5 You have probably less guilt, workers that are involved  
6 in some of these. And this is not to say that all of the  
7 pipeline workers are -- or pipeline projects have a bad  
8 ending or have a bad outcome, but there has been some  
9 that have caused some social impacts that we would rather  
10 have not had happen.

11 And when you isolate which of the social impacts are  
12 the worst it's always invariably law enforcement. And so  
13 I spent a lot of time dealing with sheriffs' offices and  
14 law enforcement personnel whenever I could find them to  
15 find out just how bad it was. And, you know, I was  
16 pleasantly surprised that there was very little law  
17 enforcement contact with these people.

18 There was -- you know, if I wanted to give you some  
19 kind of general feel for it, I think that my findings  
20 would say that, you know, there's probably more contact  
21 with law enforcement in the northern part of the project  
22 than there was in the central or southern part.

23 And the type of contact was not the contact that I  
24 was somewhat fearful of. There was no instances of  
25 contraband or illegal drugs or selling and buying

1 contraband that they could identify.

2 They had some traffic violations in two or three of  
3 the county sheriff offices that I talked to. But yet  
4 there was some such as the Yankton law enforcement there  
5 that said they couldn't recall a single case of contact  
6 with law enforcement people.

7 And, indeed, this is very encouraging. Or it's a  
8 very positive finding, I think, on my part. And I don't  
9 know if -- you know, I didn't study the conditions -- I  
10 wasn't involved in the first pipeline project approval  
11 process. But, you know, if there were conditions imposed  
12 on the selection of workers or contractors or something  
13 that might have had a cause and effect type relationship  
14 here, I would say that would be something you'd want to  
15 continue as far as a recommendation for me.

16 Because, you know, I can tell you that it is not  
17 unusual to have these kind of problems, these kind of law  
18 enforcement problems when you work with pipeline people.  
19 In Wyoming at least.

20 Q. And your report also recognized some impacts on  
21 agriculture. Do you believe that the Applicant has  
22 adequately mitigated or made arrangements to deal with  
23 potential crop loss or loss of grasslands?

24 A. Yes, I do. You know, that was another issue that --  
25 you know, I really knew only limited amounts about how

1 they were dealing with that from the standpoint of, you  
2 know, before I went out and went on this field visit.  
3 And I made some contacts.

4 First of all, you know, I located where the activity  
5 was actually occurring because I wanted to see a little  
6 bit more about how -- you know, how -- what a corridor  
7 looked like and, you know, how it was addressed, how it  
8 was organized, and things like that.

9 It happened that the time -- this was in September  
10 when I did the field survey. They were working somewhere  
11 north and west of Spencer, a small little community in  
12 the Mitchell area.

13 And I had the opportunity -- it was kind of a  
14 excellent place. The timing was everything that day.  
15 You could stop along a county road and watch what was  
16 going on, and there was all kinds of spectators along the  
17 county road that I could visit with. And I wanted to  
18 find out a little bit about what compensation programs  
19 looked like.

20 And my finding was that -- and the perception I was  
21 finding was begun at that point. And the one universal  
22 thing that I found was that everybody that had land that  
23 was affected by this corridor that was on the corridor  
24 were generally pleased about it. They didn't express  
25 that they were displeased.

1 I inquired among several of them on the nature of  
2 the loss of crop protection that they had. And the way  
3 they explained it to me was that they were held harmless  
4 on loss of crops. And I asked one of them -- for  
5 example, there was a hail storm that had hit a field in  
6 the vicinity and, well, this one here, this doesn't look  
7 like it's going to grow much anyway.

8 And they said that they were held harmless on that,  
9 that the compensation wasn't based on the yield of  
10 adjacent row crop -- rows of corn or soybeans but was  
11 based on a good year, a good year's yield or something  
12 like that.

13 And the other thing I learned, that a typical  
14 compensation for loss of crops was not only for one year  
15 but for two. And it seemed to be that it was not  
16 dependent on if they actually lost crops for two years,  
17 that they actually got paid even if they -- even if they  
18 were able to get a crop in this next year, 2010, and  
19 there was just a presumption of loss of crop that they're  
20 going to be compensated for.

21 They also have -- I learned that the -- the  
22 compensation for the access and underground easement was  
23 thought to be adequate on the part of people. And, in  
24 fact, I think there was numbers of people elsewhere that  
25 I talked to in neighboring towns that you sensed that

1 there was a sense of envy on the part of people that  
2 didn't have land that was in the corridor because of the  
3 payments that these easements would be affording the  
4 agricultural people.

5 So the only thing that I found among agriculture  
6 people was that, you know, there's some concern about  
7 they want their roads to be brought back to the way they  
8 were, and they weren't very happy about having to travel  
9 on the roads that were already impacted by it.

10 And at that point I asked, well, do you think -- do  
11 you have some reservation or question that, you know,  
12 they may not ever do it. And they says, no, we're not  
13 worried about that. We just wished it would get over  
14 with and they'd get out of here and we'd get the road  
15 back like it was, you know, that kind of thing.

16 But I thought, you know -- and I -- conservatively I  
17 know I talked to at least 15 farmers up and down that  
18 area from Yankton up to north of Spencer, and it might  
19 have been as much as 25. But I could not -- and the  
20 reason -- I kind of overdid it in that area was, number  
21 one, I kind of like talking to farmers but the other  
22 thing I like to do is I keep getting the consistent same  
23 answers, I want to make sure I'm not talking to, you  
24 know, a bunch of relatives or something. And these were  
25 independent, you know.

1 One person I talked to was at the top of a grain  
2 bin, and I was hollering my questions to him from the  
3 ground because I wasn't about to go up there. And he was  
4 hollering the answers down to me. And I was filling them  
5 out as we went, you know.

6 You know, so they're all independent I guess is my  
7 point. I didn't find that, you know -- I didn't  
8 interview all 20 of them at the same meeting or anything  
9 like that.

10 Does that answer your question?

11 Q. It does. Thank you. And we already discussed the  
12 construction camps but any other concerns related to  
13 housing or do you believe that mitigates any of those  
14 worries?

15 A. Yes. And, you know, there's somewhat of a -- of an  
16 evolution in the way that was dealt with. When the first  
17 Application or the first run of the Application was -- I  
18 received that and started reviewing it, it sounded like,  
19 well, the company had a -- they were thinking they might  
20 do this, that it was a possibility and stuff.

21 And I said, well, wait a minute, you know. I've, of  
22 course, been working in the tourism industry in the state  
23 for, you know, 25, 30 years working on economic aspects  
24 and occupancy and things like that. And, you know, I  
25 know that there would be capacity problems with tourism

1 if they didn't make it a reality and just left it as a  
2 consideration.

3 And as they -- as I kept getting answers back on my  
4 discovery questions and things, it became apparent that,  
5 yes, that was their plans, that they were going to do  
6 that.

7 And one of my issues, when you look at the corridor  
8 that they've got mapped out, the kind of tourism that  
9 they have there is quite limited. Except for the town of  
10 Murdo. And Murdo and -- and environments around there is  
11 the main travel corridor of the Black Hills tourism  
12 market.

13 And, of course, when you look at restaurants and  
14 motels, you know, they're happy to have business year  
15 round or more year round than they do with the  
16 traditional 90-day tourism season that we have in this  
17 state.

18 But, you know, there's ancillary businesses, you  
19 know, like attractions that people go to. And if the  
20 traditional tourists are displaced, that has a  
21 deleterious effect on these attractions. And certainly  
22 pipeline workers don't necessarily go to those kind of  
23 attractions, but they would use motels and hotels and  
24 restaurants and things like that.

25 So of all the towns that -- as far as pure tourism

1 was concerned I was concerned I guess about Murdo. And  
 2 in my inquiries with the company they said, you know, the  
 3 people that would be working up there would be housed at  
 4 one of these camps in the Winner area. And that I  
 5 thought was quite important.

6 You know, there will still be people staying -- you  
 7 know, there's still going to be people staying there, but  
 8 I don't think that -- you know, I think they have  
 9 somewhere between 2 and 300 rooms in Murdo, and I'm sure  
 10 there will be some available rooms and campground spots  
 11 and things for tourists as well, even though a lot of  
 12 them will be occupied by pipeline workers.

13 The other aspect of tourism and I don't -- I guess I  
 14 don't call hunting so much tourism but, you know, it's a  
 15 recreation. It's an outdoor recreation. And if you talk  
 16 to people in the Winner area and the southern part of the  
 17 corridor, you know, that's big pheasant country, and, you  
 18 know, there are some other impacts there that I've talked  
 19 about in a different section of this study.

20 MS. SEMMLER: I have no further questions at  
 21 this time.

22 MR. SMITH: Applicant, questions of Mr. Madden?

23 MR. KOENECKE: I just have a couple.  
 24  
 25

CROSS-EXAMINATION

1 BY MR. BLACKBURN:

2 Q. Just to take a step back, you said that you  
 3 conducted the survey in September?

4 A. Yes.

5 Q. Over how much time did you take to conduct that  
 6 survey in September?

7 A. It was -- it occurred over a period of three days  
 8 one week. And then I took the weekend off, and then the  
 9 next Monday I did a few more.

10 Q. Uh-huh. So a few more meaning two days, three days?

11 A. Oh, no. One more day. Just half --

12 Q. One more -- three days one week, and then you took  
 13 the weekend off and another day?

14 A. That's right.

15 Q. So four days. Do you have any -- did you have  
 16 survey forms? Did you have particular forms that you  
 17 filled out?

18 A. Yeah. Well, I filled them out. They didn't fill  
 19 them out. But I had them, yes.

20 Q. Okay. And are those part of the record, or is that  
 21 just --

22 A. No. They were my working papers. I think I  
 23 probably still have them. I don't have them up here.  
 24 And I may not even have them in the building. But I  
 25

CROSS-EXAMINATION

1 BY MR. KOENECKE:

2 Q. Thank you, Dr. Madden. Focusing your attention on  
 3 the proposed project, Keystone XL, is it fair to say that  
 4 your -- you've looked at sectors of the economy?  
 5

6 A. Yes.

7 Q. And have you looked at individual businesses at all?

8 A. No. I have not looked at -- in the new project?

9 Q. Right.

10 A. I have talked to two businesses in Murdo, you know,  
 11 just anecdotally, you know. You know, they're more than  
 12 ready for it to come, you know, that kind of thing, I  
 13 guess. If that's what you mean.

14 Q. I guess what I really want to know is the effects of  
 15 a pipeline spread on Frank Day's bar in Dallas. Do you  
 16 have anything at all in that regard?

17 A. Well, I think Frank will be -- will be happy with  
 18 the kind of customers he gets myself. But you might know  
 19 him better than I do.

20 Q. I suspect you're right.

21 MR. KOENECKE: Thank you, Dr. Madden. That's  
 22 all I have.

23 MR. SMITH: Dakota Rural Action.

24 MR. BLACKBURN: Yes. Thank you.  
 25

1 think I would still have them.

2 Q. Do you have a number of -- for the number of people,  
 3 surveys that you completed?

4 A. Not right here I don't have.

5 Q. Do you know how many farmers you talked to  
 6 throughout the route?

7 A. I would say --

8 Q. We're talking Keystone I here.

9 A. Yes. Right. I would say no less than 15 I talked  
 10 to.

11 Q. Throughout the entire route?

12 A. Well, they were -- no. I did not talk to -- and  
 13 I -- I did not make -- my trip did not include going up  
 14 to the northernmost extreme of the project. And, you  
 15 know, I could have come up with -- after listening to  
 16 last night's testimony, there might have been some  
 17 different responses.

18 But I think they had, you know, the kind of weather  
 19 that was conducive to the construction back, you know, in  
 20 the part that I was at.

21 Q. How far north did you go?

22 A. Well, north of Spencer I don't know how -- I suppose  
 23 it would include the southern half, yeah.

24 Q. Uh-huh. When you conducted your survey how did you  
 25 select landowners to talk to?

1 **A. Well, it was not a random survey. It was just**  
 2 **whoever I could get ahold of. A lot of it was, you know,**  
 3 **I was just -- you know, like I say, I already explained**  
 4 **during the time I was watching the process -- or the**  
 5 **progress at one segment there I talked to a number there.**  
 6 **And then I found another town of -- kind of a ghost town**  
 7 **north of there that I found a fellow working in his yard**  
 8 **and I just went up and talked to him because I could see**  
 9 **that they had just been there.**  
 10 **And then from there I went down towards Bridgewater**  
 11 **and I found -- I didn't go up to people's doors and**  
 12 **inquire as to whether they were home. If I saw them out**  
 13 **in the field where I could talk to them, I would stop**  
 14 **them or stand there at the end, and normally they'll**  
 15 **visit with you a while.**  
 16 **And then I found some of them in -- in more of a**  
 17 **social setting when I was -- on a night I was eating**  
 18 **supper in night -- or I guess a supper club there in**  
 19 **Freeman I talked to several of them.**  
 20 **And, you know, they didn't really know who I was and**  
 21 **what I was doing. I was just kind of acting dumb, which,**  
 22 **you know, I can do at times.**  
 23 **Q. Can you give us a ballpark of how many people you**  
 24 **talked to?**  
 25 **A. I would say 15 or 20.**

1 **Q. That's farmers but for all kinds of people?**  
 2 **A. Well, it can go down -- I talked to -- where I could**  
 3 **find them I talked to fire and first responders, which in**  
 4 **a lot of cases are the same kind of -- or the same**  
 5 **people.**  
 6 **Q. How many first responders or fire department**  
 7 **personnel, emergency personnel?**  
 8 **A. I don't know. I don't know. I know Mitchell was**  
 9 **one of them that I talked to the fire departments. Well,**  
 10 **we run the ambulance too.**  
 11 **Then I also talked to the hospitals, anybody that**  
 12 **had a hospital. And I went to the town of Salem. They**  
 13 **don't have a hospital, but they have a clinic there. And**  
 14 **I just wanted to find out how much of -- of an impact --**  
 15 **you know, whether or not they were taxed as far as their**  
 16 **capacity and stuff.**  
 17 **Q. How many hospitals or clinics did you visit?**  
 18 **A. I went to one, two -- four.**  
 19 **Q. Okay. Did -- were you -- did you have any names of**  
 20 **people before you started on your survey process of**  
 21 **people that you intended to visit with or talk to, any**  
 22 **particular individuals?**  
 23 **A. Well, not names so much as the position. You know,**  
 24 **I knew I wanted to talk with the sheriff of Davison**  
 25 **County and I knew I wanted to talk to the sheriff of**

1 **Yankton County and any ones I could find in between.**  
 2 **And, you know, whenever I was talking to these**  
 3 **sheriffs, one time I was in Mitchell and they were having**  
 4 **a sheriff's gathering and there was several county**  
 5 **sheriffs that happened to be there at the same time,**  
 6 **which was nice.**  
 7 **And then I wanted to -- you know, I asked -- one of**  
 8 **the questions as I recall on the questionnaire was, you**  
 9 **know -- you know, describe the best you can your problems**  
 10 **or your contact you've had as a result of this pipeline.**  
 11 **And then I'd say, well, have you heard other counterparts**  
 12 **in other counties.**  
 13 **And I can't remember who it was, but he said, well,**  
 14 **the one we haven't talked to lately is over in**  
 15 **McCook County. So I drove over there and talked to the**  
 16 **deputy. The sheriff was not in town that day. But I did**  
 17 **talk to the deputy and got my answers that I wanted.**  
 18 **So that was kind of the nature. It wasn't a deal**  
 19 **where I randomly drew names and tracked them down. That**  
 20 **was not my intent.**  
 21 **MR. BLACKBURN: Thank you. Just a second.**  
 22 **Q. When you conducted your surveys did you generally**  
 23 **say -- how did you describe or introduce yourself to the**  
 24 **people that you talked to about, you know, who you were**  
 25 **doing it for and why you were doing it and those sorts of**

1 things?  
 2 **A. Well, I -- when I talked to, you know, public**  
 3 **people, public officials like sheriffs and fire**  
 4 **departments I told them that I was out there doing a**  
 5 **survey on behalf of the Public Utilities Commission that**  
 6 **asked me to come out and find out what the impacts are in**  
 7 **these local communities.**  
 8 **And I didn't have a fixed script but they all --**  
 9 **yes. All of those people knew what I was doing.**  
 10 **Q. Okay. Thank you. You conclude here in short**  
 11 **agricultural interests -- this is on page I believe it's**  
 12 **15 -- 13. Sorry. Of the report. In short agricultural**  
 13 **interests seem satisfied with negotiations, resulting**  
 14 **agreements and -- I should slow down.**  
 15 **"In short agricultural interests seemed satisfied**  
 16 **with their negotiations, resulting agreements, and the**  
 17 **companies carrying out details associated with**  
 18 **agreements."**  
 19 **Did you review -- in preparation of that statement**  
 20 **did you review any of the liaison reports by**  
 21 **TransCanada -- provided by TransCanada to the Commission**  
 22 **in -- provided by TransCanada's liaison officer that**  
 23 **reviews problems and sort of serves as an ombudsman**  
 24 **person for TransCanada? Did you review any of those**  
 25 **reports before you conducted your survey?**

1 **A. If you're referring to the quarterly reports I did,**  
 2 **yes. I looked at the one that was available for me that**  
 3 **was most relevant was the second quarter of calendar year**  
 4 **2009. The third quarter is out now, and I've also read**  
 5 **that one at this point.**

6 **But prior to going on this trip I did have that**  
 7 **first -- or second quarter.**

8 **Q.** Were you aware if any of the concerns that some of  
 9 the landowners who spoke -- first off, did you attend the  
 10 public hearing last night?

11 **A. I did.**

12 **Q.** Were you aware of any of those concerns that were  
 13 raised by landowners in the Keystone I pipeline before  
 14 you conducted your survey?

15 **A. No, I did not. They were not -- I would have to**  
 16 **look at that again, but I didn't see anything remarkable**  
 17 **in that second quarter report from landowners at that**  
 18 **point.**

19 **Q.** Uh-huh. And what were the particular dates that you  
 20 conducted your survey in September?

21 **A. It would have been around the -- it was around the**  
 22 **15th of September. And the only reason I happen to know**  
 23 **that is because it was right close to my birthday.**

24 **Q.** If you can bear with me for a second. Just going  
 25 back to a calendar of September. So the 15th of

1 September is a Tuesday. Was it the weekend preceding  
 2 that Tuesday?

3 **A. It would have been that -- it would have been that**  
 4 **week. Wednesday, Thursday, Friday.**

5 **Q.** The 21st on Monday. Okay.

6 **A. That was when I was about done. Yeah.**

7 **Q.** Okay. Thank you. You also said that although the  
 8 exact numbers -- this is also on page 13 of the report,  
 9 "Although the exact numbers are not easily acquired from  
 10 those interviewed, it appears the area -- in the area  
 11 where these interviews were conducted a typical access  
 12 easement involved a payment of approximately \$40,000 per  
 13 mile of land."

14 How many -- how many easements did -- or individuals  
 15 did you talk to about their easements, and how many  
 16 different numbers did you have based on -- to base that  
 17 figure on?

18 **A. I think -- not everyone. Not everyone, you know, I**  
 19 **talked to. But there was a total of two landowners who**  
 20 **were recipients of that. And then the others were**  
 21 **landowners that were immediately adjacent to the overall**  
 22 **project, but the corridor did not traverse theirs.**

23 **And they -- you know, they gave me enough of an**  
 24 **impression that I was confident that that was pretty**  
 25 **close in that particular area as far as the access**

1 easement value.

2 **I did talk also about the crop loss compensation.**

3 **And, you know, a couple of them pointed out that it**  
 4 **depended whether you had pasture land or whether you had**  
 5 **cropland. You know, if you had pasture land, your**  
 6 **compensation was presumably less, somewhat less. But I**  
 7 **did not find out just what those dollar amounts were.**

8 **The ones I had enough people tell me that it was**  
 9 **around 40,000 a mile that I don't think I'm too far off.**

10 **Q.** How many people specifically told you it was about  
 11 \$40,000 per mile?

12 **A. Counting the ones that both were recipients and the**  
 13 **ones that were neighbors of recipients, I'd say five.**

14 **Four or five.**

15 **Q.** And the recipients that you actually talked to were  
 16 two I believe you said?

17 **A. Two.**

18 **Q.** Okay. Did you see the agreements themselves or --

19 **A. No. My understanding is that those are not**  
 20 **available. There's a confidentiality associated with**  
 21 **them. And those are the kind of questions you can't**  
 22 **get -- you know, you've got to be kind of conversational**  
 23 **about those kind of things. You can't call somebody up**  
 24 **on the phone and say, you know, bring your papers out so**  
 25 **I can look at them.**

1 **Q.** And then the last part of your discussion about  
 2 agricultural concerns you said that the -- let me find it  
 3 here.

4 You said, "Although those interviewed acknowledge  
 5 that pipeline work near the operation was not complete,  
 6 road conditions remained as the only issue they showed  
 7 concerns about."

8 The word that struck me there is the word "only."  
 9 Is that still your opinion?

10 **A. I would say I probably would have been better to say**  
 11 **the major concern. There was maybe other little**  
 12 **incidental things but nothing that -- that was the one**  
 13 **that came up more than others. They kept saying their**  
 14 **farm -- the market roads are important to them, and they**  
 15 **needed to have them back in shape. And, you know, that's**  
 16 **why I brought it -- that's why I mentioned it, I'm sure.**

17 **Q.** Based on the public hearing last night, do you  
 18 believe that there are other concerns that are not  
 19 reflected in your report?

20 **A. Yes. I think, you know, the phasing of where I was**  
 21 **in terms of talking to people was probably affecting my**  
 22 **results. But there -- you know, a lot of the project**  
 23 **that I was surveying they hadn't gotten to the point of**  
 24 **reclamation and returning the land back and so last night**  
 25 **heard that is a concern and, you know, they -- if I would**

1 **do that survey in another two weeks, maybe there would**  
 2 **be, you know, a different set of answers because of**  
 3 **weather issues and things like that.**  
 4 **Q.** Is it a fair assessment to say that your report is  
 5 not a statistical report?  
 6 **A. No. There's not much statistics in it. There's --**  
 7 **whenever you do sociological things or social impacts**  
 8 **it's not common that you can come up with statistics.**  
 9 **You know, you can -- if there's something**  
 10 **significant happens. You know, for example, if there was**  
 11 **a lot of law enforcement problems, you could go, you**  
 12 **know, to the courts and find out how many of these people**  
 13 **ended up going through court and, you know, what it was**  
 14 **last year at this time.**  
 15 **But when they tell you that they haven't had any**  
 16 **contact there's no statistics that are supportive or**  
 17 **helpful in coming up with your conclusions.**  
 18 **Q.** So do you know how many farmers or farms were  
 19 impacted by the Keystone I pipeline?  
 20 **A. I do not know. I have a rough idea how many or**  
 21 **approximately how many, but I don't know how many, no.**  
 22 **Q.** Would it be possible to -- I assume it would be  
 23 possible to determine that. And if so, would it be  
 24 possible to conduct a survey that was statistically  
 25 significant related to the impressions of the farmers or

1 landowners of those properties?  
 2 **A. I suppose it would be possible. It would be**  
 3 **expensive, but it would be possible.**  
 4 MR. BLACKBURN: That's all I have. Thank you.  
 5 MR. SMITH: Thank you. Commissioner questions  
 6 of Dr. Madden?  
 7 CHAIRMAN JOHNSON: Dr. Madden, I do find myself  
 8 being a little concerned that most of your field work  
 9 took place only on one half of the pipeline.  
 10 Is there anything you can say that would ease  
 11 those concerns?  
 12 THE WITNESS: Well, yeah. I think so. The --  
 13 the only difference really would be the -- the input from  
 14 agricultural people with the -- with the law enforcement  
 15 people and the hospitals and the schools and all of those  
 16 I -- those I didn't personally walk in and visit, I  
 17 contacted by telephone as soon as I got back. And even  
 18 some of them that were in my route in my area I couldn't  
 19 get ahold of the right people at the time I was there  
 20 like in Yankton, for example. And I would leave a card  
 21 and say, well, I'll be calling this person, you know,  
 22 when I get back on Tuesday or whatever it happened to be.  
 23 And so I don't think -- the only thing that --  
 24 you know, and I think that's valid that I didn't get a  
 25 picture of the agricultural reaction from North Dakota

1 clear to Montana -- or to Nebraska.  
 2 CHAIRMAN JOHNSON: Did you rely on some  
 3 telephone communication to touch base with some contacts  
 4 on the northern half?  
 5 THE WITNESS: Oh, yes. I contacted the hospital  
 6 in Aberdeen. I contacted the school system in Aberdeen  
 7 to find out what the enrollment impacts were. And I've  
 8 outlined that in the study.  
 9 CHAIRMAN JOHNSON: Mr. Blackburn asked, but I'm  
 10 not sure it was answered. I know you said you didn't  
 11 know the exact number, but can you give me some rough  
 12 idea of how many folks you would have talked to  
 13 throughout the entire process of your work for the  
 14 Commission staff? Are we talking 25, or are we talking  
 15 50?  
 16 THE WITNESS: 50. I would say 50 would be a  
 17 safe number. Might have been a few more. But certainly  
 18 50.  
 19 CHAIRMAN JOHNSON: You did talk a little bit  
 20 about rural comments in your comment, although much of it  
 21 seemed to focus on more commercial centers.  
 22 Do you feel as though you had enough contact  
 23 with law enforcement personnel and first responders in  
 24 rural counties?  
 25 THE WITNESS: Well, I think I did. One of the

1 towns that I talked to the -- I don't know if they call  
 2 them officially the police chief or not but they have two  
 3 policemen in Groton, and I was able to contact him and  
 4 talk to him for a considerable amount of time, to talk  
 5 about contacts with these people.  
 6 And then I talked to the -- it must have been  
 7 the city finance officer or some similar counterpart in  
 8 that town. That's still in my -- I think Groton is in  
 9 Brown County so it's -- it's not Aberdeen, but it's a  
 10 small town within Brown County.  
 11 I also talked to the person that was in -- that  
 12 ran a general store of some type in Spencer for quite a  
 13 while, just to get a feel for what kind of business --  
 14 because, you know, one thing about Spencer there's a  
 15 whole bunch of -- there's a little it looked like an  
 16 abandoned motel maybe a mile south of Spencer. And there  
 17 was a whole series of RVs parked alongside of it. And I  
 18 asked about that.  
 19 And we visited about it. He said, yeah, these  
 20 guys come in and buy bread and stuff like that and  
 21 whatever else he was selling, I guess. Gasoline.  
 22 Then I went to -- I spent quite a bit of time in  
 23 Salem because it was quite close. It was not too far  
 24 from the pipeline itself. And they had a lot of -- by  
 25 their judgment when you talk to them they had a lot of

1 impact. There was people renting houses in town. There  
2 was -- you know, the grocery store proprietor knew that  
3 they were here.

4 Then I went to Freeman. That's another smaller  
5 town in Hutchinson County. And, you know, I talked to  
6 many businesses in that town.

7 CHAIRMAN JOHNSON: Okay. Thanks. I think  
8 that's very helpful. And I may have missed this in your  
9 report so just tell me if I have. But, I mean, I did see  
10 in your report that you did make some extrapolations and  
11 some assumptions about how much of a labor cost would  
12 flow into the taxable sales stream.

13 And I thought it was helpful. Even if it wasn't  
14 based on hard data, those presumptions made by an expert  
15 like yourself I think would be helpful.

16 Was there similar analyses or extrapolations  
17 conducted for impact on landowners?

18 THE WITNESS: Well, not -- I guess I didn't  
19 write them down. But as far as, you know, if you just  
20 make the assumption that I'm pretty close on my value of  
21 the easement on a per mile basis, that translates into,  
22 you know, pretty close to \$10 million just for the  
23 easements. I don't know what the loss of crops but, you  
24 know, say that's 300 an acre or 200 an acre.

25 You know, that translates into a lot of dollars

1 too. But, you know, just the easement, you know, that --  
2 for agricultural people a \$10 million shot, that's  
3 significant in the State of South Dakota.

4 CHAIRMAN JOHNSON: We have had some landowner  
5 Complaints about a pipeline causing a loss of value or a  
6 saleability of their property. In past siting  
7 proceedings we have had some testimony to refute that.

8 Did you do any literature review or any analysis  
9 to determine whether or not those were legitimate  
10 economic concerns? And if so, what their impact on  
11 South Dakota would be?

12 THE WITNESS: Just a cursory analysis. I guess  
13 I just reasoned out that, you know, if these numbers are  
14 right that I came up with, and I think they are pretty  
15 close to being right, that translates into a payment per  
16 acre for this easement of about 24 to \$2,800 an acre,  
17 depending on how wide the easement -- I think I've heard  
18 testimony saying it was 150 feet on this first one and  
19 then I heard a number like 109 feet on the next one or  
20 whatever.

21 But, you know, to give you a ballpark number,  
22 it's 2,400 or 2,800 or so per acre for that easement.  
23 And that would tell me that if -- you know, the ground --  
24 the price of land in the area that I'm talking about in  
25 the southern half of the first pipeline project is

1 probably around that, 2,400 to \$2,800 an acre. If you're  
2 going to go buy a farm, I would guess that's -- according  
3 to the statistics, that's about what it is.

4 So in that sense if -- the worst-case basis  
5 would be if the result of putting the pipeline in  
6 rendered that land totally worthless from now until  
7 kingdom come, they would still be compensated for its  
8 value because of the value -- of the monetary amount of  
9 that easement.

10 So I guess I would have a tendency at this point  
11 to say that unless someone can show me that not only  
12 would that acre be worth zero dollars from now until  
13 kingdom come, they'd have to show me that there's been a  
14 diminution of value in neighboring acres just because  
15 it's close to the pipeline. And I can't see any credible  
16 evidence of that.

17 CHAIRMAN JOHNSON: You note some sales tax  
18 trends or, rather, numbers in your report. We've had  
19 some testimony -- or we had some comment last night where  
20 people suggested or argued that taxable returns in some  
21 of these communities are up because of the pipeline. In  
22 your field research -- I mean, causation's a very  
23 difficult thing to uncover when you're dealing with large  
24 systems like this.

25 But were there any other reasons or rationales

1 that you uncovered in your field research that would have  
2 indicated why those tax proceeds were up absent the  
3 pipeline?

4 THE WITNESS: No. That would not be the case.  
5 In fact, I relied to a great deal on -- to a great extent  
6 on my visits with chambers of commerce.

7 And they have a -- you know, as you know, they  
8 have kind of a -- they have a pulse of the business  
9 community wherever they're at. You know, they hear  
10 things. They go to meetings. And, you know, the  
11 information flow is pretty good.

12 And, you know, one I remember talking at Yankton  
13 to the chamber of commerce there, and they said that  
14 there's no doubt -- you know, they even went to the  
15 trouble of trying to calculate how much was spent. They  
16 come up with an idea of around 5 or \$6 million. And I  
17 think that's pretty consistent with what I -- I'm  
18 suggesting there's 20 or 25 million probably spent by  
19 workers. And that would have been their share of the pie  
20 I guess, so to speak. So I think it's probably pretty  
21 close.

22 But the perception is there anyway that there's  
23 no doubt in their mind that it really made the  
24 difference.

25 And, you know, they have a good point because if

1 you look at these other counties, you know, their sales  
2 taxes were much more dismal than what turned out to be  
3 the case in these counties here.

4 CHAIRMAN JOHNSON: I'll be honest -- this is my  
5 final question. I'll be honest. I found myself  
6 initially somewhat concerned when you identified that the  
7 number of interviews you conducted were in the dozens  
8 rather than some higher number. Granted, these -- I know  
9 these are very time-consuming analyses but --

10 I mean, I want to advance a counterargument, you  
11 know, to see if maybe my concerns are misplaced. You  
12 have a lot more experience doing this than I do.

13 I mean, is it possible -- I mean, were you  
14 careful enough to make sure the 50 people you were  
15 talking to at least some majority of them were opinion  
16 leaders from whom -- they would almost act as a funnel.  
17 You know, if you're chamber of commerce president, maybe  
18 you're hearing from number of folks.

19 I mean, is the value of those 50 people greater  
20 than I initially feared they were? Because 50 doesn't  
21 sound like a big number.

22 THE WITNESS: No. It probably doesn't sound  
23 like a big number. But when you consider that, you  
24 know -- when I'm counting 50 that may be low. Now that I  
25 think about it, I probably was low. Because when I was

1 just kind of running through my mind who all I talked to  
2 I didn't think about all the store keepers in Salem and  
3 all of this. You know, these were just people I could  
4 run into.

5 But, you know, when you're talking to sheriffs  
6 there's only so many sheriffs available. And, you know,  
7 sheriffs can tell you about everything there is to know  
8 about law enforcement because they had -- I mean, that's  
9 where it goes. It passes through their office no matter  
10 what.

11 If you talk to hospitals, you know, there's a  
12 finite number of hospitals along the route. So you can't  
13 sample more than four of them or five, whatever the  
14 number is, because that's all there is. And you can get  
15 all the information you want with a small amount of  
16 number of people contacted.

17 CHAIRMAN JOHNSON: I think that makes sense.  
18 Let's correct the record. And I know nobody's trying to  
19 pin you down to a specific number and I know we've used  
20 approximate and rough and order of magnitude, but if you  
21 think 50 is no longer accurate, is there a better guess?

22 THE WITNESS: Well, I would say absolutely no  
23 less than 50 and it could be as much as -- probably no  
24 more than 90, I would say.

25 CHAIRMAN JOHNSON: Okay. Thank you.

1 MR. SMITH: Other Commissioner advisor?

2 Mr. Rislov.

3 MR. RISLOV: I have a couple. When you were  
4 talking to the people -- let me say the farmers  
5 specifically because I think it's been concluded you  
6 looked at the southern half rather than the northern  
7 half. What were the, you know, recent rain conditions  
8 like in that part of the state?

9 Had it been raining recently? Was there an  
10 abundance of rain? We've heard about that along parts of  
11 the route.

12 THE WITNESS: The time I was doing these  
13 interviews was perfect weather. It was prior to any of  
14 the fall rains, of course, and, yeah. It was ideal  
15 situations, you know. And, like I say, if I go back  
16 there today, I might come up with more -- maybe not more  
17 upset people but maybe more people worried about things.

18 MR. RISLOV: And, again, I guess looking at the  
19 Keystone line rather than the XL line which -- I suppose  
20 it's instructive, but did you happen to look at the  
21 Complaints the Commission received related to activities  
22 of the company prior to your testimony today?

23 THE WITNESS: Of the old --

24 MR. RISLOV: Yes.

25 THE WITNESS: -- initial one?

1 MR. RISLOV: Yeah.

2 THE WITNESS: I kind of relied -- on the  
3 Complaint side of it I relied on the compilation that was  
4 done by the -- the liaison in Huron.

5 MR. RISLOV: Did that play into your interview  
6 process at all when you went out on the road?

7 THE WITNESS: Well, at that point, no. No.

8 MR. RISLOV: And I think, you know, with the  
9 number of -- you're as aware of anybody in this room  
10 about statistics and I guess the confidence you could  
11 have with the material you reported given your  
12 background. I guess maybe a two-part question on that.

13 Even though you can't prove statistical  
14 significance to, you know, whatever degree in this, you  
15 know, in your studies, how do you feel personally about  
16 the material you gained taking a look back at Keystone I  
17 and the operations of this company dealing with  
18 landowners? Understanding, of course, that statistically  
19 we don't have all the tests that maybe some would like.

20 THE WITNESS: You mean the perception of farmers  
21 towards the way they were treated by Keystone?

22 MR. RISLOV: Yeah. Your opinion of that.

23 THE WITNESS: I think I was impressed by -- you  
24 know, usually farmers don't compliment people in suits  
25 very often. And they were -- several of them said, you

1 know, I think I was really treated fair by these people.  
2 Maybe they wouldn't say it now. Maybe the precipitation  
3 would have tempered their opinion.

4 But I think most of them were -- they said they  
5 were treated fair. I remember the one guy I talked to  
6 said, well, they sure treated me fair, he says, but my  
7 neighbor, he's complaining about the way they're treating  
8 him. But then he says, he complains about everything  
9 anyway.

10 You know, this is the kind of interviews you do  
11 with these people. And, you know, so, you know, I guess  
12 I can't say -- that would be the only instance I guess of  
13 any hint of people that were -- and I never even talked  
14 to the fellow. I didn't know who it was that he said was  
15 his neighbor. And I got the impression that they didn't  
16 get along too well.

17 MR. RISLOV: Thank you.

18 MR. SMITH: Is that it, Greg?

19 MR. RISLOV: That's it.

20 MR. SMITH: Other Commissioner questions?

21 Commissioner Hanson, do you have anything?

22 COMMISSIONER HANSON: No, I do not. Thank you.

23 MR. SMITH: Commissioner Johnson.

24 CHAIRMAN JOHNSON: No, sir. Thank you.

25 MR. SMITH: Okay. Staff, did you have any

1 redirect of Mr. Madden? Dr. Madden. Excuse me.

2 MS. SEMMLER: No. Nothing. Thank you.

3 MR. SMITH: Applicant.

4 MR. KOENECKE: No, Mr. Smith. Thank you.

5 MR. SMITH: Do you have any additional questions  
6 responsive to the Commissioner questions?

7 MR. BLACKBURN: Yes. Just about the labor costs  
8 that Commissioner Johnson asked about.

9 RE-CROSS-EXAMINATION

10 BY MR. BLACKBURN:

11 **Q.** On page -- page 5 of your report related to --  
12 specifically to labor costs you state, "The original  
13 Application for the project indicated an expected cost of  
14 \$303 million in the state. This would imply that labor  
15 costs would be approximately 50 to 70 million. Net wages  
16 to workers will be some fraction of this amount, perhaps  
17 35 to 45 million. Some portion of this amount would  
18 translate to spending in South Dakota while working in  
19 this state."

20 Did you request and receive data from TransCanada  
21 related to their actual labor costs for Keystone I?

22 **A. Actually what I used was the -- was the expected  
23 costs that they outlined in their Application for that  
24 project. It could be that the actual cost of the  
25 pipeline turned out to be more than that. I don't know.**

1 **Q.** Uh-huh. Well, Dakota Rural Action actually did  
2 request the specific data from TransCanada related to  
3 their actual employment costs in the state, including  
4 both the workers that were South Dakota residents and the  
5 workers that were not South Dakota residents.

6 And you haven't seen any kind of data like that, the  
7 number of workers, actual workers in South Dakota?

8 **A. No.**

9 **Q.** Do you have a sense of the number of percent of  
10 employees in South Dakota -- or employees for this  
11 pipeline that were residents of South Dakota?

12 **A. Anecdotal. You know, I think I heard testimony last  
13 night that there was at least 100, according to one of  
14 the witnesses at the public hearing. And I think that  
15 was the expectation at the time that Application was  
16 made, that there would be about 100.**

17 **But that's the only -- the only information I have.  
18 Nothing statistically founded.**

19 **Q.** Understanding that DRA has that data but has chosen  
20 not to include that in the record just because of  
21 logistical reasons, we can put it in our public comments  
22 and that will be available to the Commission, if the  
23 Commission hasn't otherwise acquired that information  
24 from TransCanada.

25 CHAIRMAN JOHNSON: Again, Mr. Blackburn, I

1 think -- and it may not matter what I think. I think  
2 this gets very difficult when we've got information that  
3 you all are saying, you know, is important, it will be of  
4 use to the Commission. I don't know how it can be of  
5 formal use.

6 I mean, citizen comment, I understand how that  
7 can cause us to ask different questions and look at  
8 things differently. But if you're going to ultimately  
9 end up disputing what an expert witness has said, I don't  
10 know how we use that.

11 MR. BLACKBURN: Well, all I -- the reason that  
12 we didn't put that in is because the landowners have a  
13 certain set of interests and concerns. And the  
14 information about the labor it turned out not to be  
15 something they chose to pursue. I mean, it is what it  
16 is.

17 So that's why we didn't include that in our list  
18 of documents; because it wasn't related to what the  
19 concerns the landowner asked me to include.

20 CHAIRMAN JOHNSON: But those same landowners who  
21 say it's not part of their concern are now going to  
22 introduce it as public comment?

23 MR. BLACKBURN: I don't know -- I'm saying if  
24 you'd like to have it, we can do it, but otherwise we  
25 won't submit it.

1 It's not something that we -- we don't feel an  
2 obligation to include every bit of information we got  
3 from TransCanada because it's not part of necessarily the  
4 landowners' concerns.

5 But that's why I went out to the edge of asking  
6 the witness whether he had gotten that information  
7 because we certainly had it and it wasn't terribly  
8 difficult to get that piece of it. That was part of  
9 TransCanada's first discovery response. And I think I  
10 was a bit surprised that he had not asked for that kind  
11 of information since it is available directly.

12 CHAIRMAN JOHNSON: Well, and you're an attorney,  
13 and you know this better than I do. And you represent  
14 DRA, and I don't.

15 But I would tell you one of the things that  
16 makes a really good decision is when you have a fleshed  
17 out record that where you've got parties that have put  
18 the information in the record that's necessary to come to  
19 a really good decision.

20 And I know there are some resource constraints.  
21 But I do have to tell you as the guy who's ultimately got  
22 to make the decision, it is frustrating that we continue  
23 to have specters raised about concerns.

24 This is a concern over here but that we don't  
25 have hard evidence introduced into the record to allow

1 the Commission to do anything actionable on those  
2 concerns.

3 MR. BLACKBURN: Well, let the record show that  
4 there is me and Ms. Fuller who is not an expert. There  
5 are two of us here. TransCanada has up to 24, I believe,  
6 25, something like that, people they can -- correct me if  
7 I'm incorrect. The Commission staff has, you know,  
8 multiple witnesses and a fairly large budget. I regret  
9 as much as you do our inability to not provide those  
10 resources.

11 Perhaps the Commission could look at an  
12 Intervener compensation program to allow that kind of  
13 action to happen. Because, frankly, this kind of  
14 proceeding is extremely expensive to do at the level that  
15 we would like to do. It just simply is beyond most  
16 landowners that I know of to provide the kind of  
17 resources that the Commission has. And it's impossible  
18 for landowners to provide the resources that TransCanada  
19 has.

20 We are as frustrated with you as that. You  
21 know, I wish I was an expert in geology pipeline  
22 corrosion, and, you know, social economic impacts of  
23 pipelines. I can go on and on with all the lists.  
24 Pipeline spill emergency response.

25 If I were an expert like that, I would probably

1 be a lot richer than I am right now. So all I'm saying  
2 is we do not have the resources to do that. We're trying  
3 to do the best we can. We regret we don't have those.  
4 There are mechanisms the government can do to allow  
5 landowners to have more access to resources.

6 CHAIRMAN JOHNSON: There was an expert in  
7 paleontology -- maybe the foremost expert in paleontology  
8 in this state who on his own dime drove here last night  
9 to provide public comment. I would have thought that  
10 calling him as a witness wouldn't have cost DRA a whole  
11 lot of money.

12 It's not my job to put together the case for you  
13 all. And I want to make it clear that I think staff  
14 witnesses have done a very good job in their prefiled  
15 testimony and in their oral testimony in trying to fill  
16 out the record.

17 It just seems to me -- I mean, ultimately staff  
18 witnesses have determined the things -- they don't  
19 believe some of the things you're raising are concerns  
20 worthy of a far greater fleshing out. It just seems to  
21 me that in those areas where you disagree with staff  
22 experts I would have liked something more.

23 And that's a frustration you and I share, and  
24 we'll talk about it some other time I'm sure down the  
25 road so.

1 MR. BLACKBURN: And Mr. Larson is a -- the  
2 paleontological resources, the landowners saw those as  
3 being private resources. DRA does not represent, you  
4 know, the private economic interests of specific  
5 landowners. That's why we didn't address those  
6 particular -- that particular issue. We are just --  
7 Mr. Smith, you're between us here so --

8 MR. SMITH: Oh, I'm sorry.

9 MR. BLACKBURN: Microphones not allowed a lot of  
10 latitude to move. So that's why we did not because that  
11 was seen as an individual landowner's wish to raise that.  
12 They could raise those concerns. I cross-examined on  
13 some of those issues because the landowners, you know,  
14 thought perhaps that I should do that.

15 But that was not a primary concern because the  
16 DRA is looking at different kinds of issues than the  
17 specific impacts of paleontological resources on  
18 particularly landowners' lands. It was not a significant  
19 thing for DRA.

20 CHAIRMAN JOHNSON: Well, and I -- thank you very  
21 much.

22 MR. SMITH: I forgot where we are here. Oh,  
23 we're done then.

24 You're done; right, Mr. Blackburn?

25 MR. BLACKBURN: Yes. And thank you very much.

1 MR. SMITH: Okay. Yep. Do you have any -- you  
2 don't have any redirect; right, staff?

3 MS. SEMMLER: No.

4 MR. SMITH: Okay. Well, I have to say that took  
5 a lot longer than I thought. I would not have made the  
6 suggestion if I thought this was going to be 20 minutes  
7 or so.

8 So I think with that then we will recess. And  
9 my -- now am I right then, Kara, that it's 3:30 that your  
10 guy can be here or approximately?

11 MS. SEMMLER: It is. And I don't think we'll  
12 have cross-examination from Dakota Rural Action. From  
13 what it sounded like they have to leave. I don't know if  
14 there's any cross from the Applicant. It's up to the  
15 Commission I guess if you want that witness available for  
16 questions if you have any questions. The Applicant does  
17 not.

18 MR. SMITH: Okay. Thank you. And that's a  
19 really great point. On the record, Keystone are you  
20 going to have any cross-examination of Mr. Kenyon?

21 MR. TAYLOR: I don't think so.

22 MR. SMITH: Okay. Commissioners, the taxation  
23 testimony is what we're talking about here.

24 CHAIRMAN JOHNSON: I mean, I might. I mean, it  
25 will depend a little bit on if he says anything

1 different. I mean, I understood what his prefiled said,  
2 but if there was anything different today, that may cause  
3 a question. I mean, do he we need to know that?

4 MR. SMITH: Do we need to know that? I think  
5 what you're getting at, right, Kara is that maybe we're  
6 done -- or, you know --

7 MS. SEMMLER: He doesn't have any additions or  
8 changes to his testimony. So if Commissioners have  
9 questions, he'll be here at 3:30 certainly.

10 MR. SMITH: Okay.

11 MS. SEMMLER: But if you don't have questions, I  
12 was suggesting we could move on to the rebuttal case and  
13 not interrupt the flow of how things normally then go.

14 CHAIRMAN JOHNSON: Sorry. I didn't understand.

15 MR. SMITH: You know, and if -- I don't know  
16 if -- what you may have in the way of -- are you going to  
17 have -- do you want to take a break before we --

18 MR. KOENECKE: Yeah. We need lunch to decide  
19 that.

20 MR. SMITH: What do you guys say then for a  
21 recess?

22 I don't know what the -- I'll defer to the  
23 parties but if -- I'm just thinking if it turns out that  
24 if they have a rebuttal witness -- if it doesn't deal  
25 with taxes, is it going to be a problem if we have an

1 out-of-order presentation there?

2 MR. KOENECKE: No.

3 MR. SMITH: Is that a problem for staff?

4 MS. SEMMLER: No.

5 MR. KOENECKE: We think 3 o'clock would work.  
6 We won't have any more than a half an hour.

7 MR. SMITH: Okay. Why don't we recess until --  
8 we'll recess until 3 o'clock then. Okay. Thanks,  
9 everyone.

10 (A recess is taken)

11 MR. SMITH: Good afternoon, everyone. I'm going  
12 to call the hearing back to order in HP09-001, the matter  
13 of TransCanada Keystone XL Project.

14 Staff, we're at the point of concluding your  
15 direct case. Are you ready to proceed?

16 MS. SEMMLER: We are ready, and Mr. Kenyon is  
17 here so I would call Mr. Michael Kenyon to the stand.

18 (The witness is sworn by the court reporter)

19 DIRECT EXAMINATION

20 BY MS. SEMMLER:

21 **Q.** Good afternoon. Could you please introduce yourself  
22 to the Commission and give them a little bit of  
23 background regarding what you do and where you work.

24 **A. Thank you. Good afternoon. My name is Michael**  
25 **Kenyon. I'm the director of property and special taxes**

1 **for the South Dakota Department of Revenue & Regulation.**

2 **As far as my background, I -- let's see. I**  
3 **graduated from University of South Dakota with a double**  
4 **major in criminal justice, political science. I moved on**  
5 **to the University of Iowa College of Law where I got a**  
6 **law degree.**

7 **I clerked for a trial judge in Minnesota for a year**  
8 **and then began working for the Department of Revenue as a**  
9 **staff attorney back in 1999.**

10 **In 2003 I accepted my current position. I'm the --**  
11 **as I mentioned, I'm the director of property and special**  
12 **taxes. I collect the State alcohol and tobacco taxes for**  
13 **the State, around 150 million, and then handle or**  
14 **administer the State's role in the property tax system.**

15 **Q.** And did you write and submit prefiled testimony on  
16 this matter?

17 **A. I did.**

18 **Q.** And is it there before you?

19 **A. It is.**

20 **Q.** And if I asked you those questions today, would you  
21 answer them all the same?

22 **A. I would.**

23 **Q.** If you could please just give us a brief summary  
24 then of your testimony.

25 **A. Well, what I tried to do in my written testimony is**

1 to first give you an overview of how the property tax  
 2 system works in South Dakota. And then, second, I gave  
 3 sort of an illustrative example of how the taxes, the  
 4 levies, the taxes collected and the tax levy rates change  
 5 as new value is added to the system.  
 6 I looked at an example of one county,  
 7 Harding County. And I looked at -- you know, I made some  
 8 assumptions about how the value would change and then  
 9 what the various taxing entities would do with that  
 10 increase in value.  
 11 I summarized -- beginning on page 12 I summarized  
 12 sort of my -- my illustrative example. I looked at first  
 13 how much school taxes Keystone XL would pay. And the  
 14 number that I came up with, the estimate that I came up  
 15 with was \$713,000 for the Harding County School District.  
 16 And then I broke out how those taxes work which are  
 17 the school general fund taxes, how much is capital  
 18 outlay, pension, and special ed.  
 19 For the county taxes I made sort of a range of  
 20 estimates. Because of the state's property tax caps,  
 21 there is some discretion into how much taxes the local  
 22 entities can generate with their tax base.  
 23 So I looked at sort of the minimum amount and the  
 24 maximum amount. Then I chose a number sort of in  
 25 between. And you can see on page 12 and on to page 13

1 sort of that range of tax liability for TransCanada.  
 2 MS. SEMMLER: I have no further questions.  
 3 MR. SMITH: Applicant. Mr. Taylor.  
 4 MR. TAYLOR: Only one question.  
 5 CROSS-EXAMINATION  
 6 BY MR. TAYLOR:  
 7 Q. Mr. Kenyon, all of the revenue that's developed by  
 8 ad valorem property taxes assessed against the pipelines  
 9 and various counties and school districts will remain  
 10 with local government, will it not?  
 11 A. That is correct.  
 12 MR. TAYLOR: Thank you. That's all.  
 13 MR. SMITH: Since Dakota Rural Action is no  
 14 longer present at the hearing, we'll move on to  
 15 Commissioner and advisor questions.  
 16 Commissioner Kolbeck.  
 17 COMMISSIONER KOLBECK: Yes, Mr. Kenyon. Do you  
 18 anticipate any problems with gaining the information that  
 19 you need from TransCanada as far as taxation is  
 20 concerned?  
 21 THE WITNESS: No. At least we haven't had  
 22 problems in the past. The State requires this  
 23 information to be provided to us, and people generally  
 24 do. We haven't had a situation where we've asked for  
 25 information or needed information and it wasn't provided

1 to us.  
 2 COMMISSIONER KOLBECK: Okay. Have you had any  
 3 difficulty in dealing with TransCanada on the first  
 4 pipeline that was permitted in South Dakota?  
 5 THE WITNESS: No.  
 6 COMMISSIONER KOLBECK: Of the assessors and the  
 7 assessed value, is that done by the counties?  
 8 THE WITNESS: No. The assessment -- most of the  
 9 assessment, most of the property taxes the value for that  
 10 is established by the county assessor. TransCanada will  
 11 be -- Keystone XL will be essentially assessed by the  
 12 Department of Revenue.  
 13 COMMISSIONER KOLBECK: Okay. So there will be  
 14 state assessors out there looking strictly at the  
 15 pipeline; is that correct?  
 16 THE WITNESS: Exactly. We have one state  
 17 assessor who does all our central assessment on property.  
 18 COMMISSIONER KOLBECK: Does the land value  
 19 assessment that the pipeline runs through, is that  
 20 affected, or is that still through the county?  
 21 THE WITNESS: The -- we'll assess the land as  
 22 well. We'll assess the right of way.  
 23 COMMISSIONER KOLBECK: Okay. So the right of  
 24 way essentially is assessed along with the pipeline.  
 25 THE WITNESS: Right.

1 COMMISSIONER KOLBECK: Okay. So does that  
 2 figure out to be a net decrease for taxes to the  
 3 landowner? In other words, if that land is centrally  
 4 assessed, you don't double tax it, do you?  
 5 THE WITNESS: Right. It will either be  
 6 centrally assessed or locally assessed. Not both. It's  
 7 one or the other.  
 8 COMMISSIONER KOLBECK: Okay. If it's centrally  
 9 assessed, does that go to the landowner to pay or to  
 10 TransCanada to pay?  
 11 THE WITNESS: As far as the value of the central  
 12 assessment, the taxes from that will be paid by  
 13 TransCanada. They'll pay the taxes on the value that is  
 14 established by the Department's assessor.  
 15 COMMISSIONER KOLBECK: Okay. For strictly the  
 16 pipeline or the land that runs above it?  
 17 THE WITNESS: For both. For TransCanada's  
 18 valuation of that.  
 19 COMMISSIONER KOLBECK: Okay.  
 20 THE WITNESS: Excuse me. For the State's  
 21 valuation of TransCanada's right of way and pipeline.  
 22 COMMISSIONER KOLBECK: Okay. So I'm still a  
 23 little confused in my mind. If you're running a row crop  
 24 over the top of a pipeline, TransCanada pays for the  
 25 taxes for those row crops?

1 THE WITNESS: Not exactly. They'll pay for the  
 2 value of their right of way.  
 3 COMMISSIONER KOLBECK: Okay. So does that --  
 4 does the value of that right of way get subtracted from  
 5 the landowner's taxation then, or am I totally confused?  
 6 THE WITNESS: You're starting to totally confuse  
 7 me. But I think the answer is no.  
 8 COMMISSIONER KOLBECK: Okay.  
 9 THE WITNESS: One will be valued as sort of a  
 10 fee simple ownership of that land.  
 11 COMMISSIONER KOLBECK: Okay. And I guess maybe  
 12 I'll rephrase. But if you have a pipeline in the ground  
 13 and they have an easement, the dirt that's on top of it  
 14 and the pipeline, that 50-foot section, if the landowner  
 15 is currently paying for the taxes on that 50-foot section  
 16 right now, do they continue -- do you understand what I'm  
 17 trying to say now?  
 18 THE WITNESS: Excellent question. I think I've  
 19 got it. What we'll do is we'll let the county assessor  
 20 know that that's no longer -- that that land is now being  
 21 centrally assessed so it will be taken off the local tax  
 22 rolls, and it will be centrally assessed so it won't be  
 23 sort of double taxed.  
 24 COMMISSIONER KOLBECK: Okay. So in effect the  
 25 landowner, their tax burden could actually decrease.

1 Because, well, some of them -- as we heard last night,  
 2 some of them have, you know, maybe 100 acres, maybe they  
 3 may have a thousand acres.  
 4 Would that thousand acres of right of way that  
 5 TransCanada purchased -- is that 1,000 acres that that  
 6 landowner will not pay now?  
 7 THE WITNESS: I believe the answer to that  
 8 question is yes. I'm about 90 percent sure. If it's not  
 9 yes, I'll certainly get back to this Commission and  
 10 re-answer the question or correct my answer but I believe  
 11 the answer is yes.  
 12 COMMISSIONER KOLBECK: Okay. The valuation of  
 13 the property, would you say that it's more like a home,  
 14 or is it more like a car? A car's value is obviously  
 15 going to go down. Is this assessed like a home where  
 16 usually a home's value will increase?  
 17 THE WITNESS: It's actually like neither. It's  
 18 more like the valuation of a business.  
 19 COMMISSIONER KOLBECK: Okay.  
 20 THE WITNESS: Where it will increase or decrease  
 21 based upon the fortunes of the business.  
 22 COMMISSIONER KOLBECK: Okay. When you say  
 23 "fortunes of the business" would that be the oil that  
 24 flows through the pipeline, or would that be the value of  
 25 the metal that carries the oil or both?

1 THE WITNESS: It would be depending upon the  
 2 revenue from the Keystone XL. So how much revenue  
 3 they're generating whether they get their money from --  
 4 as they're paid to transport the oil. I think that would  
 5 be the changes in the fortune in that respect would  
 6 change the valuation of the property.  
 7 COMMISSIONER KOLBECK: Okay. Like a trucker he  
 8 owns the truck but he doesn't own the contents in it so  
 9 he's only taxed on the truck.  
 10 THE WITNESS: If that's the way TransCanada  
 11 works, if they're like a common carrier, it will depend  
 12 upon what their revenue is.  
 13 COMMISSIONER KOLBECK: Okay. Have you -- well,  
 14 this is a speculative question, but have you heard  
 15 numbers that seem to be very consistent in TransCanada's  
 16 estimates? Do you believe those to be consistent?  
 17 I can't give you exact numbers but they're in  
 18 the millions of dollars. Do you anticipate that this  
 19 will bring millions of dollars of new tax revenue in?  
 20 THE WITNESS: Certainly millions of dollars. I  
 21 just did the one estimate, Harding County, and it was  
 22 over a million between the county taxes and the school  
 23 taxes so.  
 24 COMMISSIONER KOLBECK: All right. Thank you.  
 25 THE WITNESS: Certainly significant to the

1 taxpayer.  
 2 CHAIRMAN JOHNSON: So, Mr. Kenyon, when you --  
 3 because you mentioned in your testimony -- and I thought  
 4 you did a very good job in the first part of your  
 5 testimony in explaining the difficulty in determining the  
 6 value in something like this.  
 7 You know, you don't have a lot of transactions  
 8 to determine what the pipelines are worth and we don't  
 9 have the flow yet and the price of oil varies. I thought  
 10 you did a good job.  
 11 Because of that earlier testimony then when you  
 12 got to the point where you said I will assume that  
 13 Keystone XL will have \$60 million tax base in Harding  
 14 County, I presume that that number was very hypothetical.  
 15 Is that less hypothetical and more of an actual  
 16 guess on your part?  
 17 THE WITNESS: Well, I'm trying to distinguish  
 18 between hypothetical and a guess.  
 19 CHAIRMAN JOHNSON: I mean, for hypothetical I  
 20 thought you were taking -- you were just pulling a number  
 21 for illustrative purposes. And so the number might as  
 22 well have been 10 million as opposed to 60 million.  
 23 So let me get rid of all that, and I'll just ask  
 24 the question. Is \$60 million your best case guess for  
 25 what your valuation of Harding County would be -- I'm

1 sorry. The taxable value.  
 2 THE WITNESS: Boy, it's not. You know, we --  
 3 I'd be very reluctant to make a guess as to what the  
 4 valuation would be. It was for illustrative purposes.  
 5 CHAIRMAN JOHNSON: And the reason I'm asking is  
 6 there have been some public input meetings where, you  
 7 know, members of the Applicant's team have thrown out  
 8 numbers. Now they didn't, you know, hold those numbers  
 9 up as absolute gospel, but they said here's what we would  
 10 estimate.  
 11 And in some instances those numbers have been a  
 12 little higher than the ones you used in your testimony  
 13 for illustrative purposes. So if this was your best  
 14 guess, I wanted to dig into it a little more but you're  
 15 telling me 60 million is not your best guess.  
 16 THE WITNESS: I would be very reluctant to make  
 17 a guess. It's not our best estimation. We didn't go  
 18 through sort of a formal process to figure out where we  
 19 think their value would be. It was sort of a shot in the  
 20 dark.  
 21 CHAIRMAN JOHNSON: Now part of the  
 22 Commission's -- part of the Applicant's legal burden, you  
 23 know, is proving that this kind of infrastructure  
 24 wouldn't interfere with the orderly economic development  
 25 of the region and that it's good for the inhabitants and

1 all of that wording.  
 2 I think some people would argue that accurate  
 3 estimates of benefits on the taxation side are part of  
 4 that evaluation of orderly economic development.  
 5 I'm kind of inclined to agree with them that  
 6 that is of interest. I mean, do you have -- 60 million  
 7 isn't a very good guess and I know you have some  
 8 reluctance but maybe let's just go to the Keystone  
 9 Pipeline, the eastern one.  
 10 I mean, do we have a better idea now that is  
 11 closer in operation what the taxable value of that might  
 12 be?  
 13 THE WITNESS: We -- and I looked at this just  
 14 recently. We have two counties where the -- I think Day  
 15 and Marshall County where it's pretty much complete  
 16 through there, and that's it.  
 17 We have assigned a value for that, for that  
 18 property, but I don't know exactly what it is. I don't  
 19 know what our total valuation is for that section of  
 20 pipeline. But I think it was -- the value that we have  
 21 is almost all in Day and Marshall. There's a little bit  
 22 of pipeline in Yankton, maybe around Vermillion. Look  
 23 towards TransCanada, but I think almost all of it is in  
 24 Day and Marshall County.  
 25 CHAIRMAN JOHNSON: Understanding in your

1 testimony you explain the difficulties of assigning a  
 2 value to this sort of thing in advance of it being  
 3 operational, would it be unreasonable for a person to  
 4 presume that there would be a strong correlation between  
 5 the construction price of a new pipeline and its taxable  
 6 value at least in the early going?  
 7 THE WITNESS: Yes. I think that -- I don't  
 8 think that would be a reasonable assumption to make.  
 9 CHAIRMAN JOHNSON: Okay. So one more reason why  
 10 I'm not in the taxation business I guess; right?  
 11 THE WITNESS: It's remarkably complex.  
 12 CHAIRMAN JOHNSON: Do you have any examples or  
 13 illustrations for this Commission for other pipelines  
 14 that are already in the ground, interstate pipelines,  
 15 maybe natural gas pipelines, what they contribute to the  
 16 tax base and if you think those examples are helpful for  
 17 this Commission to consider?  
 18 I mean, it may be there are such differences  
 19 between a natural gas pipeline and an oil pipeline that  
 20 the comparisons aren't valid.  
 21 THE WITNESS: We have the total amount of the  
 22 current pipeline valuation. I didn't think to bring it  
 23 with me but we have that information and we could  
 24 calculate about how much taxes they pay as an industry  
 25 and I'm assuming it will be quite significant.

1 CHAIRMAN JOHNSON: Okay. Thanks.  
 2 MR. SMITH: Questions, Commissioner Hanson?  
 3 COMMISSIONER HANSON: No.  
 4 MR. SMITH: I don't know. Are we going to --  
 5 are you going to have some follow up or something on that  
 6 question Commissioner Kolbeck had about the relationship  
 7 between local taxation of fee interest and -- otherwise,  
 8 what I think I was going to do is just ask the parties  
 9 whether they would have any objection to Mr. Kenyon  
 10 supplementing his testimony if he's able to get us a  
 11 definitive answer on that question.  
 12 MR. TAYLOR: I can clarify that point,  
 13 Mr. Kolbeck's question, rather quickly I think if you'd  
 14 like.  
 15 MR. SMITH: Do the Commissioners mind if  
 16 Mr. Taylor offers his explanation of that?  
 17 CHAIRMAN JOHNSON: I don't mind. You would know  
 18 better than I would if that's legally consistent with  
 19 what --  
 20 MR. TAYLOR: Well, I think I can do it on a  
 21 question-and-answer basis.  
 22 MR. SMITH: Okay. Please do then. Yep.  
 23 RE-CROSS-EXAMINATION  
 24 BY MR. TAYLOR:  
 25 **Q.** Mr. Kenyon, if the pipeline company purchased the

1 fee of the right of way, then the fee of the right of way  
 2 would be taken off the local tax rolls and the fee  
 3 ownership interest would be assessed by your Department  
 4 as a central assessment, would it not?  
 5 **A. That's right.**  
 6 **Q.** And in those instances where the right of way is in  
 7 the form of an easement or that is the right to install  
 8 and operate the pipeline within the easement corridor, is  
 9 there not a statute in South Dakota that says that in the  
 10 valuation of the pipeline company's assets you have to  
 11 look at the value of the easement or the right to be in  
 12 the ground, coupled with the permanent improvements to  
 13 the easement and those are taxed to the pipeline company?  
 14 **A. That's correct.**  
 15 **Q.** But the remainder interest that remains with the  
 16 landowner, the right to use the property for all purposes  
 17 except those reserved to the easement, are still taxed at  
 18 the local level?  
 19 **A. I'm not sure that's true. What I would want to**  
 20 **double-check is to make sure -- because what we do when**  
 21 **we locally assess something is we tell the directors of**  
 22 **equalization in that county not to assess it, we've**  
 23 **already assessed this.**  
 24 **And I'm not sure how exactly that works with an**  
 25 **easement. So I guess the answer to my question is I'm**

1 **not entirely sure how that would work.**  
 2 MR. TAYLOR: If it would be helpful then, I can  
 3 caucus with Mr. Kenyon, show him the statutes. You can  
 4 figure that out, and you can submit that later.  
 5 MR. SMITH: Yeah. I guess I just wanted to  
 6 know -- yeah. If either party, staff or -- you know,  
 7 it's staff's witness, but he's offered to supplement his  
 8 testimony with a later submittal. And it seemed to me to  
 9 be a good question to get answered.  
 10 MS. SEMMLER: We can provide that information in  
 11 supplemental testimony.  
 12 MR. SMITH: And TransCanada would -- would have  
 13 no objection to him doing that?  
 14 MR. TAYLOR: No, not at all.  
 15 MR. SMITH: Subject if you have a disagreement  
 16 with it for your right to offer that.  
 17 MR. TAYLOR: Certainly. Thank you.  
 18 MR. SMITH: Are there any other Commissioner  
 19 questions, following up? Otherwise, staff.  
 20 MS. SEMMLER: No further questions.  
 21 MR. SMITH: Okay. Mr. Taylor, do you have any  
 22 questions following up on the Commissioners' questions?  
 23 MR. TAYLOR: No further questions.  
 24 MR. SMITH: Okay. I think you may step down  
 25 then, Mr. Kenyon. Thank you.

1 Staff, you may call your next witness.  
 2 MS. SEMMLER: I am done. I have no other  
 3 witnesses to call.  
 4 MR. SMITH: Gee whiz. Okay. Thank you very  
 5 much. Are you ready -- do you have any rebuttal  
 6 witnesses at this time, Applicant?  
 7 MR. KOENECKE: We do. Mr. Moore is going to  
 8 call Jon Schmidt to the stand. While he's doing that I  
 9 might state for the record that the Applicant will  
 10 clearly accept an ERP condition as found in the previous  
 11 Docket known as HP07-001. That was a question from the  
 12 other day.  
 13 Commissioner Hanson asked about a remotely  
 14 controlled valve and its proximity to worst-case spill  
 15 location. There is a remotely controlled electrically  
 16 driven valve. I believe it to be main line valve 13 at  
 17 mile post 361, which is approximately 5 miles downstream  
 18 from that spill location.  
 19 COMMISSIONER HANSON: Thank you very much for  
 20 getting back to me on that. I appreciate it.  
 21 MR. KOENECKE: Pleasure. I'll turn the  
 22 microphone over to Mr. Moore.  
 23 MR. SMITH: You're already under oath. So the  
 24 answer is no.  
 25 MR. MOORE: Okay. Very good. Thank you.

1 DIRECT EXAMINATION  
 2 BY MR. MOORE:  
 3 **Q.** Dr. Schmidt, were you present during Dr. Arndt's  
 4 testimony?  
 5 **A. Yes.**  
 6 **Q.** And did you hear his testimony about alternative  
 7 soil handling techniques?  
 8 **A. Yes, I did.**  
 9 **Q.** And in particular, he talked about an alternative  
 10 technique involving three lifts of soil. Are you  
 11 familiar with that?  
 12 **A. Yes, I am.**  
 13 **Q.** Could you just describe for the Commission your  
 14 understanding of what he was talking about?  
 15 **A. If he was talking about the triple lift soil**  
 16 **separation method during trenching, basically you have**  
 17 **three horizons of soil. You look at, A, at the surface,**  
 18 **B, and C.**  
 19 **And his testimony was talking about problematic**  
 20 **soils like the saline or sodic soils, and it's usually in**  
 21 **horizon B.**  
 22 **And so when you're trenching you want to try and**  
 23 **separate those. So the triple lift would actually entail**  
 24 **more space because you would have to strip the topsoil**  
 25 **across the right of way. You would then have to strip**

1 the horizon B off because usually the horizon C soils,  
2 the ones underneath, are good soils. So you don't want  
3 to have your equipment running up and down on this  
4 horizon B and mixing with a further subsoil. So you  
5 would actually strip another layer.

6 So now you're making your footprint significantly  
7 larger. And if you're on any kind of topography, you've  
8 got to account for side cuts on hills. So now you've got  
9 to make an even wider right of way.

10 Does that describe the methodology to you clearly?

11 Q. Dr. Arndt recommended that that particular  
12 alternative soil handling technique be used in all cases  
13 involving the problem soils that he described.

14 Do you agree with that recommendation?

15 A. No. Like our topsoil stripping methodology where we  
16 have three options that we discuss with the landowner, we  
17 would prefer to work with the NRCS to develop multiple  
18 methods so that when we go to the landowner after we've  
19 consulted with the NRCS to develop our con/rec unit  
20 mapping through the area we want to be able to have  
21 multiple options so that if a landowner wants us to strip  
22 topsoil across the whole right of way, then we want to be  
23 able to explain to him that to do so we need a wider  
24 footprint through your pasture or prairie or whatever it  
25 is and what the time would be to do that versus some

1 other options that the NRCS could develop that they could  
2 pull from as far as what the footprint is.

3 Because some ranchers particularly don't want a  
4 wider corridor. They just want you to come in and try  
5 and get it laid in a certain width. So I think it's to  
6 everybody's best interest, particularly landowners, for  
7 us to have several options instead of having a  
8 prescriptive method.

9 And so we would prefer to have the ability to work  
10 with the NRCS to develop methods with certain soils so  
11 you can do different things if you need to do something  
12 in a trench versus doing it across the whole right of  
13 way. I don't know what all those methods could be, but  
14 that consultation would be important with the NRCS.

15 Q. Dr. Arndt also described a method of identifying  
16 where those problematic soils are that would require some  
17 alternative handling technique, and he talked about the  
18 use of some kind of probe. Are you familiar with that?

19 A. Yeah. Geo probe technology.

20 Q. Are there other methods of determining where those  
21 problematic soils are that TransCanada could also employ?

22 A. Yes, there are.

23 Q. And in your view is one better than the other?

24 A. They all have their advantages and disadvantages.

25 So, again, would want the ability to use multiple tools,

1 not just one particular methodology.

2 MR. MOORE: Those are all the questions that I  
3 have. Thank you.

4 MR. SMITH: Thank you. Staff,  
5 cross-examination?

6 MS. SEMMLER: No questions.

7 MR. SMITH: Okay. Commissioner questions of  
8 Mr. Schmidt.

9 COMMISSIONER KOLBECK: If the Commission were to  
10 adopt different methods or different ways of doing that,  
11 would the ultimate goal change? In other words, would  
12 you change your method to achieve different remediation  
13 or --

14 THE WITNESS: Well, the goal would still be the  
15 same, which would be to preserve the topsoil from the  
16 layer of soil that has problematic conditions in it.

17 So the NRCS's job is to work with farmers and  
18 ranchers to deal with site-specific issues. So we feel  
19 it would just be best to consult with them to come up  
20 with a methodology. You may have somebody with rolling  
21 hills. And that triple lift method could result in a  
22 right of way that might be almost 200 feet wide.

23 You know, that rancher has to decide that versus  
24 some other methods that the NRCS may develop. It depends  
25 on what the problematic soil layer is, first of all,

1 because that will dictate, you know, what kind of issues  
2 you'll have during construction.

3 So the goal isn't to change the protection.  
4 It's to allow flexibility to do something that would  
5 allow you to have a methodology specific to that  
6 landowner's concerns.

7 COMMISSIONER KOLBECK: Okay. That was exactly  
8 my question. I probably didn't articulate it very well,  
9 but I just wanted to make sure that a different method  
10 wouldn't result in a different outcome.

11 THE WITNESS: That's not the goal. That's not  
12 the goal.

13 COMMISSIONER KOLBECK: Okay. Thank you.

14 CHAIRMAN JOHNSON: Were you here for Dr. Arndt's  
15 testimony yesterday?

16 THE WITNESS: Yes, I was.

17 CHAIRMAN JOHNSON: Am I right in recollecting  
18 that he mentioned that some of these soils we're talking  
19 about in the B layer that if they were brought to the  
20 top, could hinder re-vegetation?

21 THE WITNESS: If they're mixed with the topsoil,  
22 yes.

23 CHAIRMAN JOHNSON: You have recommended that the  
24 Commission not prescript a certain approach but allow a  
25 suite of options. If the Applicant gave the landowner an

1 opportunity to have a triple lift, the landowner said,  
 2 no, no, no, no, I don't want all this extra, you know,  
 3 right of way, I just want the single -- I just want the  
 4 single soil segregation with the topsoil, if as a result  
 5 of that decision there was greater mixing of that B soils  
 6 with the topsoil that hindered re-vegetation, would the  
 7 landowner be liable for reduced crop or grazing area  
 8 production in the out years?

9 THE WITNESS: I can't comment on the easements  
 10 or how they're written. But TransCanada has already made  
 11 a commitment in their Application to re-vegetate and  
 12 restore the right of way so.

13 CHAIRMAN JOHNSON: Well, and I'm aware of that  
 14 and that's why I'm asking because if we're talking about,  
 15 well, we may cut these deals with these landowners -- if  
 16 they want this, they need to give up this -- I want to  
 17 make sure that I fully understand what all of this is.

18 THE WITNESS: Again, alternative methods don't  
 19 necessarily mean you're going to mix the topsoil and the  
 20 B layer together. It just means that you may be able to  
 21 do something and I can't predict what the NRCS will come  
 22 up with but you will have another method that may just  
 23 focus on the trench and how to separate them in the trench  
 24 and separate them on the surface so you don't ruin the  
 25 topsoil layer, just that you don't have to do it across

1 the entire right of way.

2 CHAIRMAN JOHNSON: Well, I understand that there  
 3 may be other options. We just had testimony from an  
 4 expert, Dr. Arndt, that in his opinion this triple  
 5 separation is the best way to keep that B layer from  
 6 mixing with topsoil.

7 THE WITNESS: Under certain conditions it can.  
 8 I mean, I've seen it used primarily on very flat  
 9 agricultural land like the Mississippi alluvial soils  
 10 where, you know, you don't have a lot of constrictions on  
 11 your right-of-way work space. You've got a nice flat  
 12 terrain so you can manage the topsoil separation.

13 But you get out to the western part of  
 14 South Dakota where you have rolling hills, you may have  
 15 changes in what those restrictive soil layers are from  
 16 one section of the guy's property to another. Maybe  
 17 sodic soils in one spot, maybe paralithic shales in  
 18 another. So that dictates how wide the trench is, how  
 19 much space you need.

20 All we're saying is we want the ability to work  
 21 the issues specific to the landowner's property and not  
 22 have a prescriptive method that may not fit everybody's  
 23 property.

24 CHAIRMAN JOHNSON: What about probing methods?  
 25 You mentioned that there were different probing methods

1 available. You didn't go into any specificity.

2 THE WITNESS: The tried and true method is a  
 3 2-inch soil auger. I've seen geo probes break. If you  
 4 get any kind of dense paralithic shale, you could snap  
 5 that probe off as it's being pushed down into the ground.  
 6 Again, you want to have a suite of tools to use  
 7 when you're in the field, not something that is mandated  
 8 that may not work in every situation.

9 CHAIRMAN JOHNSON: So you've identified a  
 10 weakness of the practice that Dr. Arndt indicated. What  
 11 is -- can you give me an example of a different probing  
 12 method?

13 THE WITNESS: The 2-inch soil auger. Basically  
 14 the guy just cranks it down to different depths, takes it  
 15 out, and tests the soil right there in the field.

16 CHAIRMAN JOHNSON: Does going down only  
 17 2 inches --

18 THE WITNESS: No. It's a 2-inch probe, the  
 19 auger that you twist down in the ground. You put  
 20 extensions on it.

21 CHAIRMAN JOHNSON: That makes a lot more sense.  
 22 Got you. All right. So that's more of a manual approach  
 23 toward --

24 THE WITNESS: Correct. And we had issues using  
 25 ATVs on landowners' property as well. I mean, we did our

1 surveys in a manner that was least intrusive to them, and  
 2 some landowners wouldn't let us use ATVs so.

3 CHAIRMAN JOHNSON: Thank you.  
 4 MR. SMITH: Any other Commissioner questions?

5 On that, you know, where he talked about --  
 6 again, Mr. Arndt or Dr. Arndt about -- I don't know if I  
 7 ever quite got him pinned down as to whether he thought  
 8 the probing should be done everywhere or in selected  
 9 areas.

10 But when you're doing it -- if you've got to be  
 11 out there hand augering, is that going to be feasible to  
 12 do that widely, or is that -- or are you thinking that  
 13 this level of testing is only needed in certain areas  
 14 that can sort of be predefined using NRCS data,  
 15 et cetera?

16 THE WITNESS: Exactly. The latter scenario. He  
 17 did mention that. He said that the soil surveys are  
 18 pretty broad so you would have to work to define where  
 19 those areas are and then do the testing in those areas.  
 20 And that would be the intention.

21 MR. SMITH: Any other Commissioner questions?  
 22 Okay. At that point I guess we're back to  
 23 Applicant. Do you have any follow-up then to the --

24 MR. MOORE: Just one.  
 25

REDIRECT EXAMINATION

1 BY MR. MOORE:

2 **Q.** Dr. Schmidt, is it fair to say that TransCanada's  
3 interest is not in avoiding alternative soil handling  
4 techniques where they are necessary because of  
5 problematic soils but rather not being locked into a  
6 particular alternative soil handling technique that may  
7 not work in every instance?  
8

9 **A. That's correct.**

10 MR. MOORE: That's all I have. Thank you.

11 MR. SMITH: Staff.

12 MS. SEMMLER: No questions.

13 MR. SMITH: Thanks. I think you can step down.

14 Applicant, call your next rebuttal witness.

15 MR. KOENECKE: Commissioners, I believe we've

16 come to the end of the hearing. It's hard to believe  
17 that the words glacial till or toluene weren't put into  
18 the record, but I guess perhaps now they just were.

19 We appreciate your work over the course of the  
20 months leading up to this point. We appreciate the  
21 staff's hard work, Ms. Semmler, Mr. Binder,  
22 Ms. Splittstoesser, Mr. Solem, Mr. Knadle, and others  
23 have spent a tremendous amount of time putting us through  
24 the paces to get to this point. We look forward to the  
25 remainder of the docket. Thank you very much.

1 MR. SMITH: Thank you. And, Commissioners, any  
2 other business that you have right now?

3 Staff, anything else?

4 MS. SEMMLER: No further business.

5 MR. SMITH: Yeah. I mean, obviously at some  
6 point we're going to have to talk things like briefing  
7 schedule and that, but since one of the parties isn't  
8 here, I suppose we should probably do that at a time  
9 when -- maybe on the phone. Maybe via telephone  
10 conference is a way to handle that.

11 With that, subject to the supplemental evidence  
12 to be provided by Mr. Kenyon, the hearing -- pardon me.

13 MS. SEMMLER: I think Mr. --

14 MR. SMITH: Oh, there was one other witness.

15 MS. SEMMLER: Tom Kirshenmann was going to  
16 provide you with some data, I believe, as well.

17 MR. SMITH: Yeah. He was. Regarding just the  
18 rooting season, right, of the Least Tern. Is that it?

19 Okay. With that then, the subject of that, the  
20 hearing is adjourned.

21 (The hearing is adjourned at 3:40 p.m.)  
22  
23  
24  
25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY )  
4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:  
8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 4th day of  
11 November, 2009, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 23rd day of  
14 November, 2009.  
15  
16  
17

18 \_\_\_\_\_  
19 Cheri McComsey Wittler,  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter  
23  
24  
25

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