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APPEARANCES

Brett Koenecke and Kara Semmler, Dakota Access

Glenn Boomsma, Intervenors

Kimberly Craven, Indigenous Environmental Network and
Dakota Rural Action

Thomasina Real Bird and Jennifer Baker, Yankton Sioux
Tribe

Matt Rappold, Rosebud Sioux Tribe

Diane Best, City of Sioux Falls

Margo Northrup, SD Association of Rural Water Systems

Kristen Edwards and Karen Cremer, PUC Staff

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
Building, Room 414, 500 East Capitol Avenue, Pierre,
South Dakota, on the 29th day of September, 2015.

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1 CHAIRMAN NELSON: Welcome, everybody. We will
2 begin the hearing in HP14-002, In the Matter of the
3 Application of Dakota Access, LLC for an Energy Facility
4 Permit to Construct the Dakota Access Pipeline.

5 The time is approximately 1:00 p.m. The date is
6 September 29, 2015. The location of the hearing is in
7 Room 414 of the State Capitol in Pierre, South Dakota.

8 My name is Chris Nelson. I am the Commission
9 Chairman. With me is Commissioner Gary Hanson and Acting
10 Commissioner Richard Sattgast.

11 I am presiding over the hearing. This hearing
12 was noticed pursuant to the Commission's Order for and
13 Notice of Hearing issued August 20, 2015.

14 Petitioner, Dakota Access, has the burden of
15 proof. The issues in this hearing as set forth in the
16 Notice are, number one, whether the Application was
17 filed generally in the form and content required by
18 SDCL Chapter 49-416-11 [sic] and ARSD 20:10:22.

19 Number two, whether the Application or any
20 accompanying statements or studies required of the
21 Applicant contain any deliberate misstatements of a
22 material fact.

23 Number three, whether the project will comply
24 with all applicable laws and rules.

25 Number four, whether the project will pose an

1 unacceptable threat of serious injury to the environment
2 or the social and economic condition of the inhabitants
3 or expected inhabitants of the siting area.

4 Number five, whether the project will
5 substantially impair the health, safety, or welfare of
6 the inhabitants.

7 Number six, whether the project will unduly
8 interfere with the orderly development of the region,
9 with due consideration having been given to the views of
10 governing bodies of affected local units of government.

11 Number seven, whether a Permit for the project
12 should be granted, denied, or granted upon such terms,
13 conditions, or modifications of the construction,
14 operation, or maintenance of the project as the
15 Commission deems appropriate.

16 Number eight, if granted, subject to terms,
17 conditions, or modifications of the construction,
18 operation, or maintenance of the project, what terms,
19 conditions, or modifications of the construction,
20 operation, or maintenance of the project are appropriate.

21 Number nine, what amount of coverage under the
22 indemnity bond required by SDCL 49-41B-38 is a reasonable
23 amount to ensure that townships, counties, or other
24 governmental entities whose property is crossed by the
25 project shall be adequately compensated for any damage

1 beyond normal wear to public roads, highways, bridges, or
2 other related facilities.

3 And, number ten, what the forms, terms, and
4 conditions of the indemnity bond should be.

5 All parties have the right to be present and to
6 be represented by an attorney. All persons testifying
7 will be sworn in and subject to cross-examination by the
8 parties.

9 The Commission's final decision may be appealed
10 by the parties to State Circuit Court and the State
11 Supreme Court.

12 Rolayne Wiest, the Commission's counsel, will
13 conduct the hearing, subject to oversight by the
14 Commission. She may provide recommended rulings on
15 procedural and evidentiary matters. The Commission may
16 overrule its counsel's preliminary rulings throughout the
17 hearing. If not overruled, the preliminary hearings will
18 become final rulings.

19 That's all the legal stuff we have to say. Now
20 here's the general housekeeping details that I want to go
21 over so we're kind of all on the same basis.

22 All the hearing participants have access to
23 microphones at your seats. The mics. are push to talk.
24 If you are not using your microphone, make sure it is
25 turned off. When it's on the green light will shine

1 brightly. When it's off, it will not.

2 When we get to the point of witnesses, the
3 witnesses will be seated up here at the front table. We
4 have our star court reporter, Cheri Wittler, with us who
5 will transcribe the entire hearing. Parties need to make
6 your own arrangements with Cheri to order written
7 transcripts.

8 Audio recordings from each day's session, both
9 morning and afternoon, will be posted to the PUC website
10 as soon as possible, typically the next day.

11 There are cameras in the room, as you can see,
12 and generally they will show the image of the person
13 speaking who is either up here or at the stand. Those
14 who are speaking from the tables will not show up on the
15 video.

16 A party who is doing questioning will have an
17 opportunity to either use the mic. at your table or come
18 to the stand to question the witness. Your choice.

19 It is recommended, and at some point we will get
20 to opening statements -- it is recommended when you do
21 your opening statements that you come forward and do them
22 from the stand. That will give us better interaction and
23 allow the court reporter a better opportunity to capture
24 all of the words.

25 Our PUC staffer, Katlyn, will be running the

1 light system. As we have done in past hearings, there
2 will be 10 minutes allotted to each party for an opening
3 statement. A green light will indicate that your time
4 has begun. At two minutes left the yellow light will
5 come on, and when your time is done the red light will
6 come on and you are done.

7 If we have any electronic exhibits, those can be
8 displayed on the monitors via the laptop that's on the
9 stand, and Katlyn will help you in getting that set up
10 for anybody that has those.

11 This room will be open at 7:30 a.m. on the days
12 that the hearing convenes at 8 o'clock. There will be
13 some administrative staff up here should you have any
14 questions or needs prior to the 8:00 a.m. beginning.

15 The cafeteria is open in the basement set up
16 with tables and chairs; however, there is no food service
17 beyond vending machines, but it is an appropriate break
18 place, if you so wish.

19 With that, I am going to turn this over to
20 Ms. Wiest to take appearances, and then we will turn to
21 the two motions that have been recently filed.

22 With that -- and before I go, fellow
23 Commissioners, anything to add as we begin?

24 Nothing to add.

25 Ms. Wiest.

1 MS. WIEST: Yes. I will take appearances of the
2 parties.

3 Dakota Access.

4 MR. KOENECKE: Brett Koenecke and Kara Semmler
5 for the Applicant.

6 MS. WIEST: Glenn Boomsma, who is representing a
7 number of witnesses.

8 MR. BOOMSMA: Glenn Boomsma is present.

9 MS. WIEST: The Indigenous Environmental Network
10 and Dakota Rural Action.

11 MS. CRAVEN: Kimberly Craven here.

12 MS. WIEST: Yankton Sioux Tribe.

13 MS. REAL BIRD: Good morning. Thomasina Real
14 Bird and Jennifer Baker for the Yankton Sioux Tribe.

15 MS. WIEST: Rosebud Sioux Tribe.

16 MR. RAPPOLD: Good morning. Matt Rappold on
17 behalf of the Rosebud Sioux Tribe.

18 MS. WIEST: City of Sioux Falls.

19 MS. BEST: Diane Best appearing on behalf of
20 City of Sioux Falls.

21 MS. WIEST: South Dakota Association of Rural
22 Water.

23 MS. NORTHRUP: Yes. Margo Northrup on behalf of
24 South Dakota Association of Rural Water Systems,
25 Incorporated.

1 MS. WIEST: PUC Staff.

2 MS. EDWARDS: Kristen Edwards and Karen Cremer
3 on behalf of Commission Staff.

4 MS. WIEST: Is there anyone that I missed?
5 Thank you.

6 (A recess is taken to hear motions.)

7 MS. WIEST: I was going to proceed to opening
8 statements. I'm assuming there are no other motions that
9 should be held now before opening statements. If not,
10 parties can make their opening statements now, or they
11 can make it prior to the time you present your
12 witnesses.

13 So we will begin with Dakota Access. And I
14 believe, as stated in the Order for and Notice of
15 Hearing, opening statements are limited to 10 minutes in
16 length. And there is a little -- our light's here in
17 case you need reminding.

18 Dakota Access.

19 MR. KOENECKE: I have to tell you,
20 Commissioners, I'm excited to see what the lights do.
21 It's very tempting to run this up to 10 minutes just to
22 see how it works, but I won't take that long this
23 afternoon.

24 Brett Koenecke, appearing for the Applicant,
25 Dakota Access. The Dakota Access Pipeline Project is a

1 solid, sound project designed to bring U.S. crude to
2 market and decrease dependence on foreign oil and,
3 furthermore, open the rails up for other commodities.

4 It's a pleasure for us to be here this afternoon
5 and talking about the project, and we look forward to it
6 in all respects. We understand and we've demonstrated
7 here this afternoon that there are going to be some tough
8 questions, but we look forward to providing those answers
9 to you.

10 Over the next several days we're going to dig
11 deep into this project. I want to point out it's a
12 state-of-the-art pipeline. It's being designed and
13 built -- or proposed to be built with all of the rules
14 and regulations being met or exceeded. I think that's
15 important to point out.

16 There have been no waivers sought from PHMSA for
17 this project. The project is designed to meet the rules
18 as they're written, and we're going to demonstrate that.

19 We'll talk about why it's being proposed, how
20 it's going to be constructed, how it will be operated.
21 We'll describe the demand, the construction plans, and
22 explore the operating procedures.

23 We're squarely meeting the burden of proof.
24 We've been mindful of the burden of proof since the day
25 we filed the Application. And we're looking forward to

1 displaying that over the next several days.

2 We've got a number of witnesses. We filed a
3 number of exhibits. We've got a lot of documents, and
4 there's a lot of work to be done in that respect.

5 I want to point out we've sought input from
6 stakeholders, and we've had a discussion of that here
7 this afternoon. We've sought input from everybody that
8 jumped into this proceeding. We've asked them openly and
9 honestly tell us what your position is. That wasn't just
10 a question that was asked of the Rosebud Sioux Tribe. We
11 asked that of everybody; tell us what you think about it
12 so we can get your concerns out on the table and deal
13 with them, respond to them, and make changes where
14 necessary, and we've done that.

15 So we look forward to telling our story,
16 engaging with Staff and Intervenors in demonstrating why
17 this project deserves your favorable consideration.

18 And with that I'll let somebody else turn on the
19 yellow light.

20 Thank you.

21 MS. WIEST: Mr. Boomsma, did you have an opening
22 statement to make at this time?

23 MR. BOOMSMA: Thank you. Commissioners, I'm
24 here representing several Intervenors. Many of those
25 Intervenors you'll see throughout the hearing. A couple

1 are with me today.

2 The evidence is going to show that my Intervenor
3 clients are landowners. They're scattered throughout
4 Minnehaha and Lincoln Counties. You're going to hear how
5 many of them have owned land for decades. Some of them
6 have owned land since the turn of the century. A few of
7 them are going to tell you about how their families
8 actually acquired that land back in the homesteading days
9 going back to 1882 to 1883.

10 My clients are very proud South Dakota citizens.
11 They're very proud landowners. You're going to hear a
12 lot of emotion from them. They're involved in
13 agriculture. They're involved in proper land management.

14 You'll hear from them. Their land is very
15 fertile. It's productive. And, yes, it is valuable.
16 That didn't happen by happenstance either. What you'll
17 hear in the way of testimony is that they're very big
18 into soil conservation, watershed management, modern
19 tilling, tiling, crop management, and overall they're
20 good stewards of the land.

21 I'll emphasize again, they're very proud, very
22 proud to be landowners in this state.

23 As far as the land itself, something needs to be
24 said for that. They use their land for production of
25 crops, pastureland, farmsteads, rural housing

1 developments, and businesses.

2 Evidence will be presented about the Special
3 Permit Application characteristics of their land. Some
4 of those land parcels have very old but yet effective
5 clay or cement tiling systems. Creeks run through some
6 of the land. Many of the parcels are located right above
7 the Wall Lake Aquifer.

8 Some are located less than a mile of towns like
9 Tea or Harrisburg. Many of the parcels have still all of
10 their building eligibilities left on them. Many, almost
11 all of them, are located on watersheds.

12 Every single one of the parcels involved has
13 very fertile, black soil. And my clients are going to
14 tell you, they're going to freely admit, and they may
15 boast a little bit about how their land grows some of the
16 most productive crops in this nation.

17 As I see it, Dakota Access has this statutory
18 burden. We've heard it. It was in the order, but really
19 how I see it is that they've got to prove or show that
20 this pipeline is not going to be a serious threat to the
21 injury of the environment or the inhabitants within the
22 affected area.

23 Moreover, they've got to prove that this
24 pipeline is not going to substantially impair the health,
25 safety, and welfare of the inhabitants.

1 In the Application you make -- or mention is
2 made by Dakota Access that this needs to also be an even
3 handed, fair process. There is that element of
4 fundamental fairness.

5 From our standpoint, and I think what the
6 circumstantial evidence is going to show, is that they're
7 not going to meet their burden. On top of that, they're
8 not going to show or convince this Commission that that
9 element of fundamental fairness has been met.

10 I expect the evidence to show that the Bakken
11 oil is some of the most explosive and volatile oil on
12 earth. Next, the pipeline is not foolproof. Let's face
13 it. Nothing is. We know that. The pipeline does
14 present an unreasonable risk of harm to the safety and
15 welfare of the landowners and inhabitants. A spill would
16 be catastrophic.

17 Testimony will be that the method of stripping
18 topsoil poses an unreasonable risk to the welfare of the
19 landowners. The evidence will be that similar
20 agricultural land which experienced topsoil stripping
21 followed by supposed restoration of that topsoil is far
22 less productive for many years to come.

23 Also, the installation of the pipeline will pose
24 an unreasonable risk to the century old and modern tiling
25 systems. Again, those old tiling systems are effective.

1 But they're also fragile. They're difficult to locate.

2 We're going to present expert testimony that
3 will show you that many of the old tile systems have not
4 been recorded. It's not safe to bore above or below
5 these tile systems.

6 Next, improperly functioning tile systems will
7 result in significant loss to the landowner. Next,
8 settling of land will impact the old and the modern
9 tiling systems.

10 Also, installation of future tiling systems will
11 be in jeopardy. Productivity of topsoil disturbed will
12 be impaired. There will be compaction of the soil. That
13 will affect the land. And drainage patterns will be
14 altered.

15 Evidence will be shown too that this pipeline's
16 going to devalue my clients' property. We too submit
17 that this fundamental fairness or evenhanded element in
18 this whole process hasn't been followed.

19 Each one of my clients has already been sued by
20 Dakota Access. They've been sued, and Dakota Access has
21 asked judges to give them entry on the land for surveying
22 purposes. At least one judge has struck down that
23 request and dismissed the lawsuit.

24 It's important too that nearly every one of my
25 clients have been hit with a second lawsuit already.

1 Already. Evidence will show that they've brought this
2 lawsuit, and what they're trying to do before they even
3 get permission from this Commission, is to acquire these
4 easement areas.

5 My clients are going to tell you they're fed up.
6 They're tired of this process. They've spent a lot of
7 money, and they wonder why they've been sued two times
8 already before we're even here today. They want to be
9 heard.

10 They're going to tell you too that they're not
11 very optimistic that they're going to be dealt fairly by
12 Dakota Access down the road, in light of what they're
13 already going through.

14 My conclusion is this: The pipeline is not in
15 the best interest for South Dakota citizens. Dakota
16 Access is not going to be able to meet its statutory
17 burden. And one thing that's going to be absent here
18 today is any evidence from Dakota Access that they have
19 been dealing with landowners like my clients in a fair
20 manner.

21 You're going to hear the opposite of that,
22 actually.

23 I hope you give an open ear to my clients.
24 They're the ones who are going to be, at least from my
25 perspective, most affected by this. These are the people

1 who own the land. They're going to be the ones, at least
2 from my perspective, who are most impacted.

3 Please keep their concerns in mind.

4 Thank you.

5 MS. WIEST: Ms. Craven.

6 MS. CRAVEN: Would it be all right if I went
7 after the Tribes? I kind of feel like they should have
8 precedent to go first. They did last time in Keystone
9 XL.

10 MS. WIEST: That's fine. Could we go to Yankton
11 Sioux Tribe?

12 MS. BAKER: Good afternoon, Commissioners.

13 We're here today because Dakota Access wants to
14 lay 271 miles of 12- to 30-inch pipeline in the ground in
15 South Dakota to transport crude oil through this state
16 and several others.

17 We don't know where this crude oil is going to
18 end up or how it will end up being used. So it's safe to
19 say we have no idea whether South Dakota will see any
20 benefit from this oil.

21 What we do know is pipelines are dangerous.
22 Pipelines spill. And the crude oil that this pipeline
23 carries is toxic.

24 Dakota Access will tell you about
25 top-of-the-line technology and processes meant to ensure

1 safety. But the reason these technologies and processes
2 exist is precisely because pipelines spill. And they
3 will continue to be improved as they have for decades
4 because pipelines continue to spill.

5 Even Dakota Access can't tell you that their
6 pipeline won't spill. No matter how well pipelines are
7 constructed, they still aren't safe. They still pose a
8 threat to life, water, and ways of life in South Dakota.

9 Fortunately, the South Dakota Legislature has
10 provided statutory and regulatory protections from
11 threats like Dakota Access. Companies like Dakota Access
12 are required to obtain a Permit before a crude oil
13 pipeline can be constructed to make sure the pipelines
14 that pose a threat to the population or to the
15 environment won't be built.

16 The Commission's job here over the next two
17 weeks is to evaluate the evidence presented and determine
18 if Dakota Access has met its burden to prove its proposed
19 pipeline won't pose such a threat. For this Commission
20 to grant the Permit, Dakota Access must put forth
21 evidence that proves it will comply with all applicable
22 laws. Dakota Access must put forth evidence that proves
23 the pipeline will not pose a threat of serious injury to
24 the environment or social and economic conditions.

25 Dakota Access must put forth evidence that

1 proves the pipeline will not substantially impair the
2 health, safety, and welfare of local inhabitants.

3 Finally, Dakota Access must put forth evidence
4 that proves the pipeline would not unduly interfere with
5 the orderly development of the region with due
6 consideration having been given to the views of governing
7 bodies of local units of government.

8 However, Dakota Access will not provide these --
9 all of this evidence because it can't. Dakota Access may
10 talk about safety mechanisms, techniques, and processes,
11 but it cannot actually demonstrate the pipeline will be
12 safe.

13 Because Dakota Access cannot meet its burden of
14 proof, its Permit Application must be denied.

15 Dakota Access is required to comply with the
16 National Historic Preservation Act. This act requires
17 certain studies and precautions be undertaken to ensure
18 protection and preservation of cultural resources among
19 other things.

20 Those cultural resources include items and
21 places of significance to Native American Tribes. As the
22 Yankton Sioux Tribe will show, the majority of
23 South Dakota lands that will be crossed by this pipeline
24 are Ithanktonwan or Yankton aboriginal lands.

25 Countless cultural resources of significance to

1 the Yankton Sioux Tribe exist throughout this territory,
2 yet the Yankton Sioux Tribe was never asked or invited to
3 participate in any cultural surveys, despite the fact
4 that such surveys were allegedly conducted by Dakota
5 Access.

6 The idea of completing a cultural survey without
7 incorporating the knowledge of the cultures to whom the
8 survey is most relevant is fundamentally flawed, as is
9 the survey itself.

10 This is not the only way the Tribes' views and
11 voice have been unlawfully overlooked by Dakota Access in
12 the process. Chapter 49-41B requires a company seeking
13 to build a pipeline to give due consideration to the
14 views of governing bodies of affected local units of
15 government.

16 The Yankton Sioux Tribe, a federally recognized
17 Tribe located in South Dakota, is a sovereign nation and
18 a local unit of government. It has a police department.
19 It has a roads department. And it provides other
20 governmental services to its population.

21 The only knowledge Dakota Access even has of the
22 views of the Yankton Sioux Tribe are through the Tribe's
23 filings and statements made as part of this proceeding.
24 Dakota Access has never reached out to the general
25 counsel, which is the governing body of the Yankton Sioux

1 Tribe, or to the Tribe's businesses and claims committee,
2 which is the executive committee for the Tribe. It has
3 never shared information about its plans or potential
4 impacts of construction, and it has never sought input
5 from the Tribe about these things. Apart from this
6 proceeding, Dakota Access has ignored the Tribe all
7 together.

8 Without directly communicating with the Tribe,
9 it is impossible for Dakota Access to know the views of
10 the Tribe, let alone give them due consideration as
11 required by law.

12 In addition to its other burdens of proof, the
13 Commission has a duty to issue pipeline permits only for
14 pipelines that help fulfill the energy requirements for
15 the people of the state as identified in South Dakota
16 Codified Law 49-41B-1. This means that Dakota Access
17 must demonstrate that its proposed pipeline will
18 contribute to the energy supply in South Dakota.

19 However, as Dakota Access has already admitted
20 through discovery, the company doesn't know where the
21 product will end up. It, therefore, cannot show that the
22 product will meet the energy needs in South Dakota. This
23 again means Dakota Access's Application for a Permit must
24 be denied.

25 As the Commission will see, Dakota Access will

1 not and cannot meet its burden of proof. The pipeline
2 poses a severe threat to the people and the environment
3 in South Dakota, and it is simply not in the best
4 interest of this state. The Commission is, therefore,
5 under a duty to deny the Application for a Permit.

6 Thank you.

7 MS. WIEST: Rosebud Sioux Tribe.

8 MR. RAPPOLD: I have a few visual aides I'm
9 going to get up here.

10 (Pause)

11 MR. RAPPOLD: The regulation of competing uses,
12 the natural environment from the world around us in
13 South Dakota is accomplished through a vast statutory and
14 regulatory scheme, which is comprised of the interaction
15 of federal, tribal, state, and local government laws and
16 regulations and folks like yourself that comprise the
17 Public Utilities Commission in South Dakota.

18 My name is Matt Rappold. I represent the
19 Rosebud Sioux Tribe. Today there are many competing land
20 uses in the world around us. Wise land and resource use
21 decisions are perhaps the most important issues that we
22 face as a species at this time.

23 If one observes the energy production trends
24 worldwide, we will see that the continued extraction and
25 use of fossil fuels is going the way of the dinosaur.

1 The Dakota Access Pipeline, if constructed, just furthers
2 that direction.

3 Some examples of competing uses include food
4 production, energy development, commercial, educational,
5 recreational, resource development, habitat production,
6 water use and management, critical habitat designation,
7 consumptive uses, research and monitoring, environmental
8 education, protection of native grasslands and easements,
9 protection of endangered species, and the one that brings
10 us here today, the interstate transportation of hazardous
11 liquid materials, specifically crude oil pipelines that
12 transport crude oil.

13 Energy Transfer Partners' Application to
14 construct the Dakota Access Pipeline triggered the
15 requirements of SDCL 49-41B, the Energy Conversion and
16 Transmission Facilities Act under which the Applicant has
17 the burden of proof to establish that, one, the proposed
18 facility will comply with all applicable laws and rules;
19 two, the facility will not pose a threat of serious
20 injury to the environment, nor to the social and economic
21 conditions of the inhabitants or expected inhabitants of
22 the siting area; three, the facility will not
23 substantially impair the health, safety, and welfare of
24 the inhabitants; and, four, the facility will not unduly
25 interfere with the orderly development of the region,

1 with due consideration having been given to the views of
2 governing bodies that affect local units of government.

3 Now as you have already heard, it's our position
4 that they will not be able to present enough substantial
5 evidence to carry this burden of proof.

6 A couple of examples. They will not be able to
7 show throughout the duration of this hearing that the
8 facility as constructed, as proposed, will satisfy the
9 requirements of state and federal endangered species laws
10 and other wildlife protection statutes.

11 They will not be able to show you that they are
12 able to comply with the requirements of any other permit
13 that is required for the construction of this pipeline.
14 Why? Because they don't have any other permits.

15 Some of these permits include the Army Corps of
16 Engineers CWA Section 404-401 Nationwide Permit Number 2;
17 Section 10, the Rivers and Harbors Act Permit; Section
18 106, the Archeological Resources Protection Act Permit;
19 endangered species requirements; NTDES permits, surface
20 water withdrawal permits. They have not received
21 approval of the Section 106 National Historic
22 Preservation Act plans and requirements.

23 They have not even applied for South Dakota
24 Department of Transportation crossing permits. They
25 haven't even thought about what county road crossing

1 permits they're going to need.

2 They're still evaluating a need to apply for
3 county and local permits regarding floodplains,
4 conditional use, and building permits. They will not be
5 able to tell you that they have a route from where buying
6 pipes to bring them all the way here to South Dakota to
7 put them in the wetland where they're going to put them
8 in the ground. They do not have a route to do that, and
9 they can't tell you that they have one because they
10 don't. And the evidence will show that.

11 Of particular concern in this analysis is that
12 they have never done this before. They will not be able
13 to tell you that they have ever designed, constructed,
14 and operated a crude oil pipeline of this magnitude. As
15 a matter of fact, they're not even going to operate it
16 themselves. They have someone else that's going to help
17 them do that.

18 They will not be able to tell you that they've
19 received a Special Use Permit from the U.S. Fish &
20 Wildlife Service to cross grassland and wetland areas in
21 South Dakota.

22 Why is this important? The proposed pipeline
23 enters the state in Campbell County, south of the
24 Missouri River into an area known as the Sand Lake
25 Wetland Management District. There it encounters the

1 first of many grassland and wetland easements that are
2 managed in part by the U.S. Fish & Wildlife Service.

3 Sand Lake, as we mentioned earlier, is part of
4 this national wildlife refuge system. In Campbell County
5 it also possibly encounters the following threatened or
6 endangered species: The whooping crane, piping plover,
7 the least tern, the red knot, the Sprague's pipit, the
8 pallid sturgeon, and the northern long-eared bat. And
9 those are just the federal species.

10 I want to give you a visual of the area that
11 we're talking about here, so bear with me.

12 The website that you see here is the U.S. Fish &
13 Wildlife Service, the national wildlife refuge system,
14 refuges in the mountain prairie region, which we are a
15 part of, and it has all of the refuges from South Dakota
16 identified on the map.

17 And now I'm going to click on this link here,
18 the wetland management district map. And as you'll see,
19 as I stated earlier, the entire eastern half of the State
20 of South Dakota has been designated wetland management
21 districts of which Sand Lake is a part.

22 Now I have to tell you I'm going to call these
23 from here on out WMDs, and I just want for the record to
24 reflect because I'm -- I know we're being listened to,
25 that I'm talking about wetland management districts and

1 nothing else.

2 What are -- what is a wetland management
3 district? Actually right up here where the little arrow
4 is, that's Sand Lake district. It stretches from the
5 Missouri River all the way -- I think that's the James
6 River Valley. And then there's four other ones in the
7 state, in the eastern portion of the state.

8 What is a wetland management district?
9 According to the U.S. Fish & Wildlife Service, WMDs are
10 part of the national wildlife refuge system, which is a
11 network of lands set aside to conserve fish and wildlife
12 and their habitat. Every unit of the refuge system has a
13 purpose for which it was established.

14 A WMD provides oversight and management for all
15 of the fish and wildlife service, small land tracts in a
16 multicounty area. In South Dakota these districts manage
17 445 wetland protection areas consisting of 100,094 acres
18 and more than 1 million acres of conservation easements
19 in 25 South Dakota counties.

20 The entire pipeline route travels through WMDs
21 in eastern South Dakota. Be there no doubt about that in
22 your mind.

23 Let's take a look at Sand Lake Refuge. The Sand
24 Lake Refuge itself has been recognized as a wetland of
25 international importance. It was originally established

1 in 1961. It's the largest district in the country. It
2 covers 12,000 square miles, and they administer 162 WPAs
3 totalling approximately 43,742 acres, wetland easements
4 totalling approximately 234,000, and grassland easements
5 covering 398,000 acres. 14,000 acres of conservation
6 easements. It extends from the James River lowland area
7 to the Missouri River plateau. We'll talk about this
8 more later as we go along.

9 But each WMD in South Dakota is created for a
10 particular purpose according to the comprehensive
11 conservation plan for all Region 6 districts to assure
12 the long-term viability of the breeding waterfowl
13 population and production through the acquisition and
14 management of waterfowl production areas while
15 considering the needs of other migratory birds,
16 threatened and endangered species, and other wildlife.

17 That's the purpose of all of those colored areas
18 on the eastern part of the map. And this gets us back to
19 competing land uses.

20 One of the many topics Fish & Wildlife Service
21 is considering in the SUP Application is appropriate and
22 compatible use determination for the proposed pipeline.
23 Some of the things they've generally said about problems
24 they have, the district is very large. There's a minimal
25 operation staff that is provided for the district.

1 Headquarters is at the Sand Lake Refuge, which is far
2 from the majority land holdings.

3 MS. WIEST: And, Mr. Rappold, your time is up.

4 MR. RAPPOLD: Can I ask for five more minutes?
5 We've got eight days.

6 MS. WIEST: We'll give you one minute to wrap
7 up.

8 MR. RAPPOLD: One minute.

9 The first map that I'm showing you here is a map
10 from Fish & Wildlife Services. The easement density in
11 North and South Dakota. If you zoom in right where the
12 hand is, that's Campbell County, and you'll see
13 immediately entering the state they encounter easements.
14 The dark color purple is the highest density, over 100.

15 The next thing that I want to show you is the
16 actual route, Fish & Wildlife Service actual easements
17 where this pipeline travels and the sheer volume of
18 easements that they are encountering and will need a
19 special use permit from Fish & Wildlife Service to
20 construct the pipeline through this area.

21 As you can see, immediately upon entering the
22 state, they encounter Fish & Wildlife Service easements.
23 And it continues throughout the duration of the project.
24 Some areas have it more heavily than the others.

25 That's one of the permits they need to get, and

1 they can't tell you they have it.

2 MS. WIEST: I believe your one minute is up.

3 MR. RAPPOLD: Is it up?

4 MS. WIEST: Yes. Thank you.

5 MR. RAPPOLD: Thank you.

6 MS. WIEST: Ms. Craven.

7 MS. CRAVEN: Commissioners, Kimberly Craven here
8 on behalf of Dakota Rural Action and Indigenous
9 Environmental Network.

10 The Commission must deny the DAPL Permit
11 Application because the Applicant has not supplied
12 sufficient information under the applicable statutes and
13 regulations. Dakota Access Pipeline has not complied
14 with the information requirements in Section 18 of the
15 Energy Conversion and Transmission Facilities Act or the
16 energy facilities siting rules.

17 The DAPL Project as proposed will violate
18 numerous other state and federal laws as well such as the
19 National Historic Preservation Act and the Endangered
20 Species Act. There are significant omissions in the
21 application as demonstrated by the testimony of many
22 witnesses of the Staff, Dakota Access Pipeline itself,
23 the Tribes, Dakota Rural Action, and IEN.

24 The primary role of IEN is to support the
25 Tribes. In this docket the Cheyenne River, Rosebud, and

1 Yankton Sioux Tribes have advanced important information
2 on the potential impacts on their reservation lands,
3 waters, and communities. We urge the Commission to give
4 very thoughtful consideration to these concerns.

5 The primary role of DRA is to protect the
6 heartland of America, the farmers and ranchers. We urge
7 the Commission to also give thoughtful consideration to
8 these very important concerns.

9 Several of the PUC Staff's own witnesses
10 submitted prefiled testimony that DAPL's Revised
11 Application is inadequate in areas such as cultural
12 resources, in testimony Paige Olson. Drainage and
13 re-vegetation, testimony of Andrea Thornton. Lack of
14 noxious weed management plan, as pointed out by Cameron
15 Young. Water discharge locations, per testimony of
16 Ryan Ledin. Mitigation of impacts on threatened and
17 endangered species per testimony of Tom Kirschenmann and
18 Cameron Young. Socioeconomic impact per testimony of
19 Michael Shelly, and DAPL economic value per testimony of
20 Michael Houdyshell.

21 Many of the PUC Staff witnesses made clear that
22 the DAPL Application lacks adequate detail in important
23 areas on the environment, economic, and community
24 impacts.

25 And what about the health effects that DAPL will

1 have on the people of South Dakota? You will notice that
2 there are no witnesses set to testify about the health
3 benefits of the pipeline. We don't know what health
4 impacts there will be because DAPL has not bothered to
5 conduct an environmental assessment of the affects of
6 direct and indirect on the people and environment of
7 South Dakota.

8 An environmental assessment has not been
9 conducted by any federal agency, and the state so far has
10 not required an EA. We know piecemeal what some of the
11 environmental impacts are on the over 200 water bodies
12 including numerous grasslands and wetlands the pipeline
13 proposes to cross, but we don't have a clue about what
14 the entire length of the pipeline will do to these
15 precious resources.

16 Effects include ecological, aesthetic, historic,
17 cultural, economic, social, health, whether direct,
18 indirect, or cumulative. Effects may also include those
19 resulting from actions which may have both beneficial and
20 detrimental effects.

21 Much of the information DAPL has provided in
22 their very own witness testimonies is very weak. DAPL
23 presented individuals whose testimony is outside of any
24 area of their education and expertise they may have.

25 For example, DAPL has an agronomist, Joey

1 Mahmoud, purporting to testify about economic models and
2 the housing economies in eastern South Dakota. The
3 environmental consultant has a degree in reclamation, but
4 DAPL is attempting to have her testify on cultural
5 resources, hydrology and the mitigation required for
6 threatened and endangered species.

7 Not only did DAPL fail to submit all the
8 required information for a Permit for an oil and gas
9 pipeline in South Dakota, much of the information that
10 has been supplied is not competent evidence properly
11 proffered under the South Dakota Rules of Evidence. Much
12 of it is contradicted by Staff and Intervenor witnesses.

13 One of the main concerns of the Tribes is this
14 prospect of an oil spill. None of the analysis of the
15 environmental effects or the potential impacts by DAPL
16 account for the risks and cost of a spill in
17 South Dakota, particularly on the State's valuable water
18 resources. Important data is totally left out. That is
19 a major omission as well.

20 And the treatment of cultural resources is
21 highly problematic. DAPL indicates that it conducted a
22 Level III Survey, which is a computer program that
23 guesses the existence or nonexistence of historic
24 properties based on inputted data.

25 What is required on the National Historic

1 Preservation Act is a Class III Survey, something they
2 did in North Dakota, but not here, where 100 percent of
3 the pipeline route is walked by an archeologist whose
4 qualifications comply with the Secretary of Interior's
5 guidelines for archeological surveys under the National
6 Historic Preservation Act and a traditional cultural
7 property survey conducted by tribal experts.

8 Neither of these required surveys are in the
9 record before the Commission. The Application is simply
10 inadequate, and the Permit Application must be denied.

11 The record indicates that similar problems with
12 respect to threatened and endangered species exist. The
13 surveys are inadequate, and in the prefiled rebuttal
14 testimonies, we find DAPL lay people, that are unnamed,
15 trying to argue with the findings of state biologists and
16 Staff experts on the requisite mitigation measures for
17 critical habitat and endangered species.

18 Ultimately, DAPL's Application clearly was done
19 on the cheap. DAPL has not provided the Commission with
20 the information required to find that DAPL's in
21 compliance with all applicable laws, will not
22 substantially jeopardize the environment or South Dakota
23 residents and Tribes, and will not disrupt the orderly
24 development of our state.

25 There is no information whatsoever or adequate

1 data and lack of compliance with numerous important
2 provisions of the energy facility siting rules, including
3 Section 10 on the demand, Sections 13 through 17 on the
4 impacts, and required mitigation measures for water, the
5 environment, and fish and wildlife, and Sections 23 and
6 24 on the community impacts and employment. DAPL has not
7 complied with the statute and regulations, and its
8 Application must be denied.

9 A final statement. There's a billboard outside
10 of Rapid City. It was put up by the South Dakota Corn
11 Growers Association. And it poses the question: Oil
12 fields or cornfields? And that is up to the Commission
13 to decide.

14 Thank you.

15 MS. WIEST: Ms. Best, do you have an opening?

16 MS. BEST: Yes, I do. Thank you.

17 Good afternoon. It's a pleasure to be here. I
18 represent the City of Sioux Falls. The City has two
19 overall permitting concerns with the Dakota Access
20 Pipeline, both of which can be addressed through
21 stringent conditions. And those conditions will be
22 brought forward to the PUC.

23 The pipeline -- the proposed pipeline route
24 actually would be five miles west of Sioux Falls, and
25 would lie along the west side of the Sioux Falls

1 landfill. The Sioux Falls landfill is not a dump. It's
2 a highly regulated subtitle D landfill that's approved by
3 the South Dakota Department of Environment and Natural
4 Resources.

5 There are structures and fixtures at the
6 landfill that need to be protected, and appropriate
7 conditions imposed by this Commission will provide that
8 protection.

9 For example, there's a shelter belt that's
10 required around the landfill. That's part of the
11 regulatory requirements for the landfill.

12 The trees must be maintained so that they're not
13 just -- they must be maintained at all times while the
14 pipeline goes in, and also while the pipeline remains in
15 place.

16 The landfill has a groundwater monitoring site
17 on it. That groundwater monitoring site must be
18 protected. The landfill itself has a landfill gas
19 pipeline, which was approved by this Commission. The
20 integrity of that landfill gas pipeline must remain
21 intact both during construction and throughout operation
22 of the landfill -- or, excuse me. Of the Dakota Access
23 Pipeline.

24 Those are the kinds of things that stringent
25 conditions can address for both the construction and

1 operation.

2 Also, in addition to the landfill concerns, the
3 City also has a separate set of concerns that I think
4 also can be addressed through stringent conditions, and
5 that separate set of concern relates to the City of Sioux
6 Falls' dependence on the Lewis & Clark Pipeline water.

7 As the Commission is aware, the Lewis & Clark
8 Pipeline supplies water throughout southeast
9 South Dakota, and it does include the City of Sioux Falls
10 which now receives over half its water supply from the
11 Lewis & Clark Regional Water System.

12 It's crucial to make sure that the transmission
13 line for the Lewis & Clark system is protected. The
14 Dakota Access Pipeline will be bored under the main
15 transmission line, line south of Sioux Falls, and
16 stringent conditions need to be imposed to address that
17 as well.

18 We expect to bring forward those stringent
19 conditions to the Commission and would ask for the
20 Commission's consideration as we move forward with those.

21 Thank you.

22 MS. WIEST: Ms. Northrup.

23 MS. NORTHRUP: Thank you. Good afternoon,
24 Commissioners. Margo Northrup on behalf of the South
25 Dakota Association of Rural Water Systems.

1 We are a statewide organization. It's a
2 nonprofit organization. We're made up of nonprofit rural
3 water systems, water user districts, sanitary districts,
4 and affiliated organizations. Our members provide
5 quality drinking water to the citizens of South Dakota.

6 We have intervened in this matter because we
7 have seven rural water systems that are impacted by the
8 pipeline project. Those are WEB Water Development
9 Association, Mid-Dakota Rural Water System, Kingsbrook
10 Rural Water System, Minnehaha Community Water
11 Corporation, Lincoln County Rural Water System, South
12 Lincoln Rural Water System, and Lewis & Clark Regional
13 Water System.

14 Of those seven rural water systems, six have
15 entered into agreements with Dakota Access Pipeline to
16 either modify or move their lines to accommodate the
17 pipeline. Lewis & Clark Regional Water System has a
18 54-inch pipe which is proposed to be crossed by Dakota
19 Access Pipeline in Lincoln County.

20 Lewis & Clark has an exclusive easement for
21 this, and we have been negotiating with Dakota Access
22 Pipeline to come up with terms that might be appropriate
23 for both parties, and we hope to even be able to bring
24 those to you during the course of this hearing.

25 Like I said, we've intervened in this matter

1 because we think it's imperative to protect the drinking
2 water for the citizens of South Dakota and the health and
3 welfare of all the customers that we serve. And we look
4 forward to being part of the process.

5 Thank you.

6 MS. WIEST: Ms. Edwards.

7 MS. EDWARDS: Thank you. Staff will reserve its
8 opening statement for its direct case.

9 MS. WIEST: I believe we're done with opening
10 statements, so at this time we will take a 10-minute
11 break. Thank you.

12 (A short recess is taken)

13 MS. WIEST: I believe, Dakota Access, you may
14 call your first witness.

15 MR. KOENECKE: Thank you, Ms. Wiest. We'll call
16 Joey Mahmoud.

17 (The oath is administered by the court reporter.)

18 DIRECT EXAMINATION

19 BY MR. KOENECKE:

20 Q. Good afternoon, Mr. Mahmoud. Can you state your
21 name and business address for the record, please.

22 A. Sure. Joey Mahmoud. 1300 Main, Houston, Texas
23 77002.

24 Q. Will you tell the Commissioners what your title and
25 responsibilities are.

1 A. My title is vice president of engineering projects,
2 or vice president of engineering for Dakota Access. I'm
3 also senior vice president of engineering for all of our
4 capital projects for our company.

5 Q. Mr. Mahmoud, did you file prefiled testimony in this
6 proceeding?

7 A. Yes.

8 Q. I've set before you previously a document we've
9 marked as No. 30. Can you find that document up there?

10 A. Yes.

11 Q. Can you tell us what that document is?

12 A. It is my direct testimony dated July 6, 2015.

13 Q. Did you prepare and sign that yourself?

14 A. Yes, I did.

15 Q. If I asked you all of those questions today, would
16 you answer them in the same manner?

17 A. Yes, I would, with minor updates on length and those
18 things, yes.

19 Q. What would those minor updates be on length?

20 A. Our current mileage is still approximately 274.

21 Before we said 274.5. And it's just minor tweaks like
22 that. Our overall mileage is 1,168 versus 1,134 I think
23 is what this thing said. So minor updates in that regard
24 as we've tweaked and routed the pipeline to minimize
25 impacts to the stakeholders.

1 MR. KOENECKE: I would move the admission of
2 Exhibit 30 at this time.

3 MS. WIEST: Any objection?

4 MS. CRAVEN: Dakota Rural Action and Indigenous
5 Environmental Network, we object. We object to the
6 introduction of the prefiled testimony of Mr. Mahmoud
7 based upon his lack of personal knowledge as required by
8 Rule 602, and improper opinion testimony under Rule 701.
9 And we object to the Prefiled Direct Testimony. We want
10 to strike lines 226 through 262, which is the assessment
11 of the route, economics, and community impact; lines 277
12 and 287, DAPL impacts on health and energy; and lines 339
13 to the end, DAPL impacts on transportation, ag, taxes,
14 and community.

15 MS. WIEST: Any response?

16 MR. KOENECKE: Mr. Mahmoud has personal
17 knowledge of all of these facts and overall
18 responsibility for the Application. His testimony was
19 properly submitted and should be properly received into
20 evidence and heard here this afternoon.

21 MS. WIEST: Objection overruled.

22 MR. RAPPOLD: I have a separate objection I'd
23 like to make to the introduction of certain portions of
24 the testimony.

25 I would object to the introduction of any

1 portion of the testimony that references any actions that
2 Sunoco Logistics will be performing relating to this
3 pipeline on the grounds of hearsay.

4 MS. WIEST: Do you have a cite to that?

5 MR. RAPPOLD: Line 84 and 85, the project will
6 be operated by Sunoco. Line 90, the Dakota Access will
7 rely on Sunoco's existing crude oil operating
8 infrastructure, et cetera, and that goes through line 92.

9 MS. WIEST: Any response?

10 I'm sorry. Were you finished, Mr. Rappold?

11 MR. RAPPOLD: No. I have to go through it more.
12 There's more in here.

13 I think those are all the references to Sunoco.

14 MS. WIEST: Thank you.

15 Response, Mr. Koenecke?

16 MR. KOENECKE: I don't read those statements to
17 be hearsay, Ms. Wiest. I believe them to be facts, and
18 the declarant's perfectly able to testify to them.

19 MS. WIEST: Objection overruled.

20 Any other objections?

21 MS. BAKER: Yes, Ms. Wiest.

22 Yankton Sioux Tribe would like to object on the
23 grounds that this witness was not disclosed
24 simultaneously with the filing of the Application.

25 We understand that there was a waiver requested

1 and granted. However, that occurred prior to any parties
2 other than the Staff and the Applicant becoming parties.
3 No one had yet had an opportunity to intervene or
4 participate at that time.

5 In addition, it's improper for the rule to
6 actually be waived. It's a requirement that's set by
7 rule that's law in South Dakota and must be followed.

8 Thank you.

9 MS. WIEST: Any response, Mr. Koenecke?

10 MR. KOENECKE: The waiver was properly sought,
11 heard, and granted by the Commission in a timely fashion,
12 and no party has been prejudiced by the Application of
13 the waiver. It's completely within the Commission's
14 authority to grant those waivers and routinely does so in
15 different matters and applications when the expediency
16 and the relative positions of the parties so justify it,
17 and that's exactly what was done here in my view.

18 MS. WIEST: Objection overruled.

19 Are there any other objections?

20 If not, Exhibit 30 has been admitted.

21 MS. BAKER: Ms. Wiest, may we make that a
22 standing objection?

23 MS. WIEST: Yes.

24 MS. BAKER: Thank you.

25 Q. Mr. Mahmoud, I've also placed in front of you a

1 document known as Exhibit 1. Can you find that?

2 A. Of Exhibit A?

3 Q. You should have a No. 1. That's the Revised
4 Application that then has Exhibits A, B, C, D to it.

5 MR. KOENECKE: The exhibit is called DAPL 2.
6 It's my fault, and I apologize.

7 Q. Are you familiar with Exhibit 2?

8 A. Yes, I am. And there is a DAPL 1 as well in a
9 different binder.

10 Q. So have you found 1 now?

11 A. I do. Application DAPL 1 and Exhibit B, DAPL 3 are
12 all in the same binder.

13 Q. Okay. Thank you.

14 Let's go to 1 then. Are you familiar with that
15 document?

16 A. Yes, I am.

17 Q. Can you tell the Commissioners what it is?

18 A. This is our Application that we made to the
19 Commission as part of our filing.

20 Q. Was that document prepared under your direction?

21 A. Yes, it was.

22 Q. Are you familiar with the contents of it?

23 A. Yes, sir. I am.

24 Q. And you're able to testify as to the contents?

25 A. Yes, sir.

1 Q. We would offer DAPL Exhibit 1, the Application that
2 was filed on December 23, the Revised Application.

3 MS. WIEST: Any objection?

4 Hearing none, it's been admitted. Exhibit 1.

5 Q. Mr. Mahmoud, that Application had a number of
6 exhibits that went with it, and we set those up there as
7 well. Do you find those?

8 A. Yes, I do.

9 Q. There's an Exhibit A?

10 A. Yes.

11 Q. Can you open that up for me, please. Can you open
12 that up? Are you familiar with it?

13 A. Yes, I am.

14 Q. Can you tell the Commissioners what that is?

15 A. It's the various mappings, project maps for the
16 project that were submitted as part of the Application.

17 Q. Were those prepared at your direction and under your
18 review?

19 A. Yes, they were.

20 Q. You're familiar personally with the contents?

21 A. Yes, I am.

22 MR. KOENECKE: I would offer that exhibit at
23 this time. That is DAPL 2.

24 MS. WIEST: So we're talking about Exhibit 2,
25 Exhibit A1 through A5 filed 9-21-15?

1 MR. KOENECKE: Correct. Thank you.

2 MS. WIEST: Any objection?

3 If not, it's been offered and admitted,
4 Exhibit 2.

5 Q. Moving on then, Mr. Mahmoud, the Application had an
6 Exhibit B, which we have marked as DAPL 3.

7 A. Yes.

8 Q. Are you familiar with that document?

9 A. I am.

10 Q. Can you tell the Commissioners what that is?

11 A. These are our DAPL's or Dakota Access's typical
12 drawings for right-of-way configurations and our process
13 flow diagrams showing the flow of the crude oil.

14 Q. Were those prepared under your direction and review?

15 A. They were.

16 MR. KOENECKE: I would offer DAPL 3 at this
17 time.

18 MS. WIEST: So this would be Exhibit B to
19 Application filed 12-15-14?

20 MR. KOENECKE: That's correct. Thank you.

21 MS. WIEST: Any objection to Exhibit 3?

22 If not, it's been admitted.

23 Q. Exhibit C then we've marked as DAPL 4. Have you
24 found that?

25 A. Yes.

1 Q. Are you familiar with that document?

2 A. I am. It's the soil mapping units, the water bodies
3 crossed by the project, and the federal and state listed
4 threatened endangered species in South Dakota.

5 Q. Was that document prepared under your direction?

6 A. Yes, sir.

7 Q. And you can testify as to the contents?

8 A. I can.

9 MR. KOENECKE: I would offer DAPL 4 at this
10 time, which was Exhibit C to the Application.

11 MS. WIEST: Any objection?

12 If not, it's been admitted.

13 Q. Finally, have you found DAPL 5 by now, which was
14 Exhibit D to the Application?

15 A. I have, yes.

16 Q. Are you familiar with the contents of Exhibit D?

17 A. I am.

18 Q. Was it prepared under your direction and control?

19 A. Yes, they were.

20 Q. Can you tell the Commissioners what those documents
21 are?

22 A. It's a combination of our different construction
23 plans, ranging from our Storm Water Pollution Prevention
24 Plan through our Agricultural Impact Mitigation Plan, our
25 Directional Drill Contingency Plans as well as our Blast

1 and Mitigation Plan.

2 Q. Was the Agricultural Impact Mitigation Plan updated
3 since it was originally submitted?

4 A. It has been, yes.

5 Q. And do you know if that was submitted to the
6 Commission for filing just recently?

7 A. Yes, I do.

8 Q. And that would be the Agricultural Impact Mitigation
9 Plan you'd want considered as a part of that exhibit;
10 correct?

11 A. Yes. That's correct.

12 MR. KOENECKE: We would offer Exhibit DAPL 5,
13 which is Exhibit D to the Application as updated.

14 MS. WIEST: Any objection?

15 If not, Exhibit 5 has been admitted.

16 MR. KOENECKE: Ms. Wiest, I have nothing further
17 for this witness and would pass him for
18 cross-examination.

19 MS. WIEST: Before we go to cross, I would just
20 like to ask if the parties -- if the Intervenors had had
21 any discussions about who would like to go first on cross
22 or if there's any preference? Otherwise I can just go
23 down the line.

24 MS. CRAVEN: I always like to go -- I always
25 like to go after the Tribes since they're governments.

1 MS. WIEST: Okay.

2 Mr. Boomsma, did you want to go first?

3 MR. BOOMSMA: No.

4 MS. WIEST: Okay. Now we're down to Yankton
5 Sioux Tribe. Would you like to go first?

6 MS. REAL BIRD: I'm still getting caught up on
7 the exhibits with the numbering. If you wouldn't mind a
8 couple of seconds here.

9 MS. WIEST: Okay.

10 CROSS-EXAMINATION

11 BY MS. BAKER:

12 Q. Thank you. Jennifer Baker from the Yankton Sioux
13 Tribe.

14 Good afternoon.

15 It seems like there's a lot of confusing nature to
16 the ownerships and companies and everyone's different
17 roles based on your prefilled testimony.

18 Who is going to be responsible if there's a spill?

19 A. Well, one, I don't think it's confusing at all. The
20 ownership is very clear. We disclosed what that is so
21 everybody can see what it is.

22 Ultimately if there's a spill, it's the parents, the
23 parents of the Dakota Access, LLC. So there's three at
24 this point. There's two officially, and one will be in
25 short order. Those two being Energy Transfer Partners

1 and Phillips 66.

2 Q. And who is that third?

3 A. The third, once the deal is signed and we go through
4 the corporate paperwork, is Sunoco Logistics.

5 Q. And so those are the entities that will be
6 responsible if there's a spill? Those three?

7 A. The Dakota Access, LLC, as the company would be the
8 initial primary company that would have responsibility.
9 If they were to fail in their actions, then that
10 liability transfers upward into the corporate structure
11 of the affiliates and parents of those companies.

12 Q. And how much experience does Dakota Access, LLC,
13 have cleaning up pipeline spills?

14 A. Well, Dakota Access is a new company, but its
15 parents and its affiliates have probably more operating
16 experience than anyone in the country. Sunoco Logistics,
17 one of the parents who is also going to be a primary
18 operator of the pipeline under an operating agreement has
19 been operating pipelines since the early 1900s. Those
20 are -- include refined products as well as crude.

21 Q. Now does operating mean that they're going to be
22 cleaning up the spills?

23 A. They would be the primary operator, so their role
24 with -- as being the primary operator would oversee any
25 remedial actions should there be a spill. That's

1 correct.

2 Q. Okay. Getting back to my actual original question,
3 how much experience does Dakota Access, LLC, have
4 cleaning up spills?

5 A. It's a new company, so none.

6 Q. None. None. Thank you.

7 Now your testimony speaks about coordination with
8 agencies and engaging landowners. Was the Yankton Sioux
9 Tribe ever engaged during that?

10 A. I do not believe so. They're not an affected
11 landowner that we cross along our path of our pipeline.

12 Q. So you only engaged landowners that you crossed?

13 A. Ones that they crossed or within our defined
14 corridor for area of impact for what our surveys and our
15 potential routing limitations would be.

16 Q. So the agencies you coordinated with, those were
17 within that corridor?

18 A. The agencies that we coordinated with are both
19 federal and state agencies that have either primary
20 review, authority, or whatever the right word is, over
21 the resources within the corridor where our pipeline was
22 routed.

23 Q. Did you coordinate with any Yankton Sioux Tribe
24 agencies?

25 A. We did not.

1 Q. What about any other tribal agencies?

2 A. Not in South Dakota.

3 Q. Can you explain why?

4 A. Because we don't -- we do not cross any tribal-owned
5 properties.

6 Q. Are you aware that the Yankton Sioux Tribe is -- are
7 you aware that the Yankton Sioux Tribe is in the vicinity
8 of the pipeline?

9 A. Define vicinity for me.

10 Q. Well, I would say relative proximity, easy driving
11 distance.

12 A. Again, vicinity equals South Dakota, yes.

13 Q. It's far closer than that. I guess I don't have the
14 mileage in front of me at the moment.

15 So you engaged in no coordination whatsoever with
16 the Yankton Sioux Tribe?

17 A. When we evaluated the pipeline route within the
18 corridor where it was being routed, we looked at and
19 identified and pulled public data sources to identify the
20 land ownership that we would cross, the resources that
21 could potentially be impacted and coordinated with the
22 applicable agencies that had direct control or permanent
23 authority or review of those potential impacts as well as
24 the landowners that we cross or potentially could cross.

25 Q. Are you aware of the location of the Yankton Sioux

1 Tribe?

2 A. Not exactly, no.

3 Q. Not exactly. Are you aware of their traditional
4 location, their historical location?

5 A. In general terms, but I couldn't draw it on a map.

6 Q. Okay. Can you explain how -- what your role was
7 with respect to cultural resources?

8 A. My role?

9 Q. Sure.

10 A. Specifically?

11 Q. Uh-huh.

12 A. The studies were done under my review, under my
13 department. But as far as directly doing them, I didn't
14 do a single one.

15 Q. So you reviewed all of these studies, yet you don't
16 even know where the Yankton Sioux Tribe's historical
17 lands are?

18 A. Well, they were done under my control, so I have
19 staff that actually would review those that are
20 professional archeologists or experts in that field.

21 Q. And if you don't know, how do you know what they
22 were doing is appropriate? How would you have any
23 authority to review what they're doing?

24 A. Well, one, they're professionals, so I trust their
25 opinion. And, two, just because I can't sit here and

1 remember exactly what the boundary is doesn't mean at
2 some point along this process that I looked at it. But I
3 know I did. I just can't remember exactly.

4 Q. How are cultural resource sites identified?

5 A. How are they identified?

6 Typically we do a literature search with the State
7 Historic Preservation Office. That's the basis. And
8 then we do studies with professional archeologists that
9 do their surveys.

10 Q. Are you familiar with the concept of oral history?

11 A. Not exactly. I'm not an archeologist, but we
12 have --

13 (Pause)

14 Q. That's all right. Just proceed. That's my
15 question.

16 A. Sorry?

17 MS. BAKER: Would you reread the question as you
18 have it.

19 (Reporter reads back the requested question.)

20 A. I said I was not.

21 Q. You stated that your research begins with
22 literature, and does it include any oral history?

23 A. I'm not exactly sure.

24 Q. You're not exactly sure, but you oversee these
25 processes, these studies?

1 A. I do, that's correct.

2 Q. You don't know how these studies are conducted
3 though?

4 A. Well, I understand that I need to have a
5 archeologist, professional archeologist that understands
6 this in great detail. And so as my role to facilitate
7 the execution of the project, it's my responsibility to
8 hire those experts and either have an internal expert or
9 a third-party expert to make sure we're going through
10 those processes.

11 So I'm not an archeologist, and I'm not -- I can't
12 claim to sit here and be able to answer every one of your
13 questions as an archeologist.

14 Q. These aren't archeology questions, but that's all
15 right. I'm more interested in the process, which you
16 don't seem familiar with, so could you tell us who that
17 is going to testify is familiar with the process?

18 A. Monica Howard.

19 Q. Okay. Thank you. With respect to land use, you
20 stated that you hadn't consulted with the Yankton Sioux
21 Tribe.

22 Did you consult with the Yankton Sioux Tribe with
23 respect to cultural resources?

24 A. Can you repeat the first part of that?

25 Q. With respect to land use, you stated that you did

1 not consult with the Yankton Sioux Tribe.

2 Did you consult with the Yankton Sioux Tribe with
3 respect to cultural resources?

4 A. We did not. So we coordinated with the U.S. Army
5 Corps of Engineers under the Clean Water Act which has --
6 for a Nationwide Permit 12, which has a requirement if
7 the Corps determines that it requires some type of
8 consultation under their Special Conditions.

9 So we coordinated with the Corps, and the Corps is
10 executing that consultation.

11 Q. Let's shift gears.

12 Your testimony states that it is estimated that up
13 to 50 percent of the total construction workforce could
14 be hired locally, which really means as little as none of
15 the workforce might be hired locally.

16 Is there any actual expectation of local hires?

17 A. Well, one, that's not what that says nor means in
18 your context.

19 What it means is exactly what it says, that up to
20 50 percent of the individuals that will work on this
21 project during construction will be hired from the local
22 area.

23 So what that means under union agreements -- so
24 we've made a commitment to all the unions, excuse me,
25 under what's called the PLCA, Pipeline Contractors of

1 America, that will hire union contractors for this.
2 Under their collective bargaining agreements with the
3 PLCA, each major trade, Teamsters, Operating Engineers,
4 those unions, under the collective bargaining agreements
5 they have requirements that they hire at least -- or up
6 to is the more appropriate word -- 50 percent of their
7 local employees or staff from the local halls.

8 Now what the local halls means depends upon the
9 region of the United States that you're working under.
10 In South Dakota the local hall is actually out of
11 Minnesota that covers this entire area. So 50 percent of
12 the people that will work on this project on a
13 construction basis will come from the local halls.

14 Now how many are from South Dakota, I couldn't tell
15 you. But what I can tell you is that we've agreed to use
16 union labor under the PLCA under the collective
17 bargaining agreements with those unions. And that's what
18 the requirements state.

19 Now how that's effectuated in the field, I couldn't
20 tell you, but I know that's what the requirements are.
21 And that's what we've agreed to do.

22 Q. Okay. So you said 50, and you've said up to 50. I
23 think you meant up to 50 percent.

24 A. Up to 50.

25 Q. Now what's the small end of that spectrum? If it's

1 not zero, you said it's not possible to be zero, what's
2 the small end of that spectrum?

3 A. I don't think I said it's not possible to be zero.

4 Q. Oh, so it is possible?

5 A. I don't know. What I told you is that up to 50
6 percent will be called from from the local halls, which
7 could be from South Dakota or could be from that region
8 that that hall covers, that geographic region. I don't
9 have all of those memorized, but that's what the
10 collective bargaining agreements specify.

11 Q. Some of your work focused on the impacts on local
12 communities; is that right?

13 A. Some of my work?

14 Q. Yes.

15 A. Yes.

16 Q. What impact will be had on local cultural issues in
17 local communities?

18 A. I don't -- I don't understand the question. Can you
19 be more specific?

20 Q. Communities have cultures oftentimes. What is the
21 impact that will be had on a local community's culture?

22 A. I would not imagine any. This is a temporary
23 construction period that lasts anywhere from four to
24 eight months.

25 Q. Okay. And will there be any impact of the pipeline

1 beyond that eight months?

2 A. There could be, from a permanent employee
3 standpoint. If we're talking about are we going to
4 affect the culture, I assume under my definition that
5 that means an influx of people that would affect what
6 that cultural community, you know, or demographic looks
7 like or behaves.

8 But I don't think that the limited number of
9 permanent employees is going to have an impact on the
10 culture of that community.

11 Q. Well, and culture goes beyond just the people in
12 that community. It goes to what those people do and
13 things that they --

14 MR. KOENECKE: Objection. Counsel is testifying
15 right now.

16 MS. BAKER: I'm trying to simply provide an
17 explanation for my question.

18 MS. WIEST: Go ahead. Overruled.

19 Q. Spiritual practices, for example, and traditions.
20 Those are part of culture; right?

21 A. They can be.

22 Q. Okay. Can you tell me if the pipeline will have any
23 effect on those elements of cultures that are going to be
24 impacted by the pipeline?

25 A. I can't imagine how.

1 Q. You can't imagine how. Did you look at it?

2 A. The culture?

3 Q. The impacts on the culture.

4 A. I don't understand how our pipeline and a physical
5 feature could affect a -- an emotional state I think is
6 what you're alluding to. So, no, I don't.

7 Q. I'm not alluding to an emotional state.

8 A. Then I don't understand your question.

9 Q. That's okay. I think you've answered it.

10 You mention in your testimony legal infractions.
11 What legal infractions will subject an employee or a
12 contractor to termination?

13 A. Can you ask that one more time, please?

14 Q. Yes. What legal infractions will subject an
15 employee or a contractor to termination?

16 A. Well, if they violated our company's code of conduct
17 or policies or procedures.

18 Q. Okay. Any kind of infraction like that at all is
19 grounds for termination?

20 A. It depends on what the infraction was and how to --
21 how it's stated in our policies and procedures.

22 Q. So which infractions will -- excuse me, will result
23 in termination?

24 A. Well, it could be drinking and driving. It could be
25 drug use. I'm sure I'm not going to remember every one

1 of them.

2 Q. Do you have a list of specific infractions that are
3 grounds for termination?

4 A. I could get one.

5 Q. Okay. It does exist?

6 A. It does. It's part of our company's policies and
7 procedures.

8 Q. Is that part of the -- it's part of policies and
9 procedures you said?

10 A. Our corporate policies and procedures, yes.

11 Q. Is that something that contractors or employees sign
12 on to?

13 A. That is something -- if -- the employees do for
14 sure. Contractors, depending upon what their role is and
15 how they interface or interact with our company.

16 Q. If someone commits one of those infractions, that's
17 considered by the policy to be a terminable offense.

18 Is there any discretion of whether or not they're
19 terminated or is it automatic termination?

20 A. You know, without going through every one of our
21 policies and procedures, generally there's some
22 discretion depending on what the circumstance was.

23 Q. Okay. And whose discretion is that?

24 A. Well, it could vary. It could be somebody -- in my
25 role. It could be somebody with a lesser role that's a

1 supervisor, or it could be our legal department or ethics
2 department.

3 So it's a complex corporate structure where we have
4 policies and procedures to guide us through those
5 decisions.

6 Q. Okay. What about if an employee of a contractor
7 commits an infraction like that? Will they be required
8 to be terminated?

9 A. I would have to know what contractor and what those
10 policies and procedures were that we're talking about.

11 Q. So it might vary from contractor to contractor?

12 A. I'm sure it could.

13 Q. Why is there that inconsistency?

14 A. I don't think it's inconsistency. Each company has
15 its own corporate structure. It's its own company. So
16 we have our structure, which has our rules and
17 procedures. They may have their own. I can't quote what
18 they are for somebody I don't know.

19 Q. Does the location of an infraction impact whether or
20 not a person is subject to termination?

21 A. I don't -- I don't even know how to frame that
22 question.

23 Q. Well, let me ask you specifically. If there's an
24 infraction committed at the Yankton Sioux Tribe's casino
25 by an employee and that infraction is generally grounds

1 for termination, because it was committed at the casino,
2 will that employee be terminated?

3 A. Well, there's a lot that you just asked me. And so
4 the employee, if it was an infraction against our
5 policies, would have to be on duty, one, for that to
6 apply. Depending on what the infraction is.

7 Again, I can't speculate on what the infraction is.
8 Give me a specific example, and I'll try.

9 Q. Well, let me go a little bit further into what you
10 just said. Did you just say that the employee has to be
11 on duty for the infraction to be a terminable offense?

12 A. Could. Could be on duty. I don't know. I mean, I
13 don't know the hypothetical that you're asking me to get
14 in here.

15 Q. Well, I'm simply asking if -- let's say assault and
16 battery, for an example. If there's an assault and
17 battery between an employee -- committed by an employee
18 at the Yankton Sioux Tribe's casino, is that a terminable
19 offense due to its location?

20 A. May or may not. Again, I can't speculate because I
21 don't know the circumstance around it.

22 Q. There's no other circumstance necessary. If that --
23 if a terminable offense, whatever it might be based on
24 the policies, is committed offsite somewhere like the
25 Tribe's casino, is that employee subject to termination?

1 A. I can't answer that because it does matter.

2 Q. Which part?

3 A. What the offense was, where it was located, what
4 time of day, who it was against, what their state of --
5 everything. Their state of mind. I can't answer a
6 question under a hypothetical for a situation that I
7 simply don't have knowledge over.

8 Q. Okay. If an offense were committed on site versus
9 off site, does that make a difference in whether the
10 employee would be terminated?

11 A. On site being where?

12 Q. I'm sorry. I thought that was your phrase. At the
13 location. At a construction site or at a Dakota Access
14 facility.

15 A. Okay. So if there -- if you could, put the question
16 together for me. On site at my facility. Okay. I got
17 that.

18 Q. Okay. Is there a difference between that and the
19 same offense happening off site?

20 A. There could be, depending upon what the offense was.

21 Q. Okay. So you can't tell me whether location
22 matters?

23 A. No. It does matter.

24 Q. Okay. Switching gears again. Who will determine
25 which community members will be notified in the event of

1 a spill?

2 A. Well, depending upon the spill. So that's a pretty
3 wide open scenario. We would notify everybody that
4 potentially could or would or is directly impacted by the
5 spill.

6 Q. Who makes that determination, though?

7 A. Well, it's part us, and it's part the government.
8 So if we have a spill, we're required to notify the
9 National Response Center. So that's a automatic
10 notification. It's a federal hotline number. They make
11 a host of notices to a lot of federal and state agencies
12 depending on where the spill is.

13 And then we may, depending on the circumstance,
14 notify local first responders, and we certainly would
15 notify landowners.

16 Q. Okay. How do you determine -- I'm sorry. Who
17 determines which landowners to notify?

18 A. The operations lead during the incident.

19 Q. Can you explain who that is?

20 A. Well, it could be -- one of our employees would be
21 the lead to start off with. And we follow a standard
22 incident command system that's a federal program that
23 most operators of pipelines in North America follow.

24 So we would be the initial incident command person,
25 whoever that nominated person was from my company. And

1 then from there, you know, the notices would go out and
2 prescribed upon that policy or procedure.

3 Q. And looking at giving notice to the local community,
4 whoever is responsible for doing that, how do they decide
5 who to give notice to?

6 A. Well, some of that, again, it depends on the
7 situation. So we may give notice -- if it's a small
8 spill, that may not require notice to anybody but the
9 particular landowner that it's occurring on. Plus the
10 NRC. The NRC is typically pretty much automatic. The
11 NRC then makes the determination on who they contact and
12 when. So that's out of our control.

13 Q. Which emergency response agencies will Dakota Access
14 work with to provide pipeline awareness education and
15 other support?

16 A. Well, we work with all the impacted or communities
17 that we traverse. We've actually already started that.
18 So when we cross through a county or a community, we
19 reach out to those local emergency responders or first
20 responders and we conduct educational-type seminars and
21 discussions. We try to do that as part of our outreach.
22 We do that annually.

23 Q. Will Dakota Access work with the Yankton Sioux Tribe
24 and its agencies?

25 A. If they have a -- if they're a community that we

1 impact, yes.

2 Q. How do you define a community that you impact?

3 A. Well, if we cross through their area where they may
4 have lands or tribal ownership or some type of vested
5 interest in a property that we cross or in the counties
6 or communities where we work and operate, they certainly
7 are invited, and we would.

8 Q. Okay. They do have a vested interest, so why have
9 they not been contacted previously?

10 A. Well, as I have previously answered, we're not
11 directly impacting land traversed that's under tribal
12 ownership or control.

13 Q. When you say that Dakota Access will provide public
14 awareness education and other support, what does other
15 support encompass?

16 A. Again, it could vary. It could be from additional
17 emergency response equipment that we may stage in the
18 communities along the pipeline if that community doesn't
19 have adequate support structure. I don't know what that
20 could be, but it could be an array of things from spill
21 booms to boats, if we're by a water body, to
22 four-wheelers. Those are other support items.

23 Q. Has Dakota Access consulted with the Yankton Sioux
24 Tribe regarding transportation routes?

25 A. Not that I'm aware of.

1 Q. Does it intend to?

2 A. No, we do not.

3 Q. Does the company expect to enter into any kind of
4 road use agreements with the Yankton Sioux Tribe?

5 A. We do not.

6 Q. Will Dakota Access or its contractors utilize roads
7 or highways on the Yankton Sioux Tribe's Reservation
8 during construction?

9 A. We have no plans to do that.

10 Q. Are you familiar with which roads you'll be using?

11 A. I'm not 100 percent, but our construction manager
12 is, and so far he has not disclosed any to me that we
13 would be.

14 Q. Is he familiar with the Yankton Sioux Tribe
15 Reservation?

16 A. He is.

17 MS. BAKER: Nothing further. Thank you.

18 MS. WIEST: Mr. Rappold, did you have any
19 questions?

20 MR. RAPPOLD: Yes.

21 CROSS-EXAMINATION

22 BY MR. RAPPOLD:

23 Q. Good afternoon, Mr. Mahamad?

24 A. Mahmoud.

25 Q. Mahmoud. Sorry about that. My name gets pronounced

1 wrong all the time.

2 A. I'm used to it.

3 Q. Me too.

4 First I'd like to talk a little bit about some of
5 the laws that apply to the proceedings here and your
6 pipeline Application.

7 Can you tell the Commission just your familiarity
8 with general laws that apply to your Application here?

9 A. Well, I try to familiarize myself, but I also hire
10 attorneys to give me guidance and support on those. So
11 I'm not going to claim to be a lawyer or an expert.

12 Q. I'm not asking you to claim to be a lawyer or an
13 expert.

14 A. Okay. Good.

15 Q. I'm just asking you to tell the Commission what
16 federal laws you have knowledge of that apply to this
17 proceeding.

18 A. I have knowledge of the federal laws that apply to
19 this. Sure.

20 Q. Such as? Name one.

21 A. Clean Water Act.

22 Q. You know any more?

23 A. Sure. National Environmental Policy Act, how it
24 does not apply.

25 Q. It doesn't apply?

1 A. Well, it does in context of the Clean Water Act.
2 National Historic Preservation Act.

3 Q. Okay.

4 A. Clean Air Act. Migratory Bird Treaty Act. I can go
5 through some more. I'm generally familiar with the
6 federal laws that we have to comply with.

7 Q. And what about South Dakota laws?

8 A. I'm not as familiar with those, but that's why we
9 have May Adams to help us with that.

10 Q. Are you familiar with the national permitting
11 process?

12 A. In what regard for a national permitting process?

13 Q. How it works.

14 A. Well, it depends on what agency, so you're --
15 there's not a national permitting process that I'm aware
16 of.

17 Q. Are you familiar with the process for a No. 12?

18 A. For a Nationwide Permit 12?

19 Q. Yeah.

20 A. Well, that's not a national permitting process.
21 That's a nationwide permitting 12 under the Clean Water
22 Act that's been issued by the U.S. Army Corps of
23 Engineers in conjunction with the EPA. So I'm familiar
24 with that.

25 Q. They don't just give it to you, though; correct?

1 A. No, not in any certain terms.

2 Q. You have to ask for it.

3 A. Well, it depends.

4 Q. You're asking for one; correct?

5 A. Well, so we automatically qualify under the general
6 conditions of Nationwide Permit 12 for coverage under
7 Nationwide Permit 12. So the difference is under
8 Nationwide Permit 12 there's what's called
9 preconstruction notification. And under that we have
10 some obligations to notify the Corps of Engineers of our
11 construction plans and our project pursuant to the
12 general condition rules. But we do qualify under
13 Nationwide Permit 12. We're not asking for coverage
14 under that. That's a given under the program.

15 Q. And you have not received the go-ahead, so to speak,
16 regarding your preconstruction notification; correct?

17 A. We have not.

18 Q. So there's a process where that's still being
19 reviewed; correct?

20 A. That's correct.

21 Q. Any idea when that might be resolved?

22 A. No.

23 Q. When was your construction date? Was that in your
24 direct testimony?

25 A. We generally -- we stated in there, I believe it was

1 early maybe February to August -- I can't remember
2 exactly. Our Q1, Q2 of '16 through Q4 of '16.

3 Q. I recall seeing spring 2016. Would you agree with
4 that?

5 A. That sounds right.

6 Q. When you say spring of 2016, could you tell me
7 specifically what month that means?

8 A. Well, spring. So --

9 Q. Well, spring goes from March 21 --

10 A. Okay.

11 Q. -- until June 20.

12 A. Sometime in then.

13 Q. So which month between March and June do you
14 anticipate beginning construction?

15 A. In spring of 2016. Q1 or Q2. That's about as close
16 as we have right now.

17 Q. Okay. Do you have knowledge of any other permits
18 that are currently being applied for in any other state
19 where you propose to put the Dakota Access Pipeline?

20 A. Yes.

21 Q. What knowledge of those other permits do you have?
22 Well, actually let me back up. Strike that, please.
23 What other states are you required to get a Permit
24 in?

25 A. From a state level, North Dakota, South Dakota,

1 Iowa, and Illinois.

2 Q. Correct. Now do these other states where you have
3 to get permits, do they have similar requirements as the
4 Public Utilities Commission here?

5 A. They're similar in nature.

6 Q. Are there other federal permits involved?

7 A. They're similar permits, yes.

8 Q. So that's a yes?

9 A. There are similar federal permits, yes.

10 Q. Okay. And you're in the process of applying for
11 those; correct?

12 A. We are.

13 Q. Do you know how many there are in total?

14 A. I can probably find our table and count them.

15 Q. Do you have it handy?

16 A. No.

17 Q. Can you get it?

18 A. Yes.

19 Q. When?

20 A. Probably in a matter of a few minutes, if I can have
21 a --

22 Q. If the Commission would indulge us to allow the
23 witness to have an opportunity to get the document that
24 he just referred to.

25 MR. KOENECKE: Objection. He needs to provide

1 the document. It's his examination, not ours.

2 MR. RAPPOLD: I asked him if he knew how many
3 other permits he was applying for in other states, and he
4 told me that he didn't specifically know.

5 I asked him if there's a document that he has
6 here that would help him do that. I don't have that
7 document. He said he has the document, and it's here,
8 and I'm asking if he can get it, and he said he could get
9 it pretty quick like so --

10 MS. WIEST: Do you have the document,
11 Mr. Koenecke?

12 MR. KOENECKE: I object to the whole line of
13 questioning. Permits in the other states are not
14 relevant to this proceeding. This is about this State's
15 Permit.

16 MS. WIEST: Can you explain your relevancy,
17 Mr. Rappold?

18 MR. RAPPOLD: The relevance of this line of
19 questioning goes to the Applicant's statement that they
20 will construct this pipeline -- plan to construct this
21 pipeline sometime during the spring of 2016. And we are
22 discussing the other permits that they have to get in
23 order to be able to begin construction in the spring of
24 2016, and the number of permits that are required in
25 other states are relevant to the determination as to

1 whether or not they will have completed the entire
2 permitting process prior to spring of 2016.

3 MS. WIEST: I will allow it as it relates to
4 timing.

5 Do you have that document or not, Mr. Koenecke?

6 MR. KOENECKE: I don't have it.

7 Q. So there is no document here that you could refer to
8 that would tell us how many permits you're applying for
9 in all the other states?

10 A. Well, we have a Tracking Table that actually does
11 have that. I could probably pull it up on my computer or
12 my environmental person could if we really want to
13 produce it. You know, the simple answer is we intend to
14 have all permits ahead of and in time to construct our
15 pipeline.

16 Q. You have to have all permits before you construct.

17 A. Well, I have to have the permits that are applicable
18 to either on a federal level or in each state. So just
19 because I don't have my Permit in Illinois doesn't mean I
20 won't start in South Dakota.

21 Q. So it's your testimony then that if you're denied in
22 Iowa, that you're going to start building this pipeline
23 in South Dakota if the South Dakota PUC gives you a
24 Permit?

25 A. In theory we could.

1 Q. You could in theory. It wouldn't be very wise,
2 would it?

3 A. I don't think that's -- that's in any sort -- I
4 mean, my business decision is -- in my mind, yes, I think
5 it would be wise because I think we'll prevail.

6 Q. What if the Permit in North Dakota was denied?
7 Would you still start building here?

8 A. Maybe.

9 Q. Okay. It's your business, not mine.
10 Have you checked Energy Transfer's stock lately?

11 MR. KOENECKE: Objection. That's not relevant.

12 MS. WIEST: Any response?

13 MR. RAPPOLD: It is relevant because it goes to
14 the financial viability of the company in order to build
15 and construct a multibillion dollar pipeline and then
16 also be responsible for paying for any cleanup costs that
17 are associated -- that may be associated with any leaks
18 or breaks or problems that they have down the road. So
19 the company's financial viability as reflected in the
20 stock market is most certainly relevant.

21 MS. WIEST: Objection overruled.

22 Q. So have you checked the Energy Transfer stock market
23 lately?

24 A. Not today.

25 Q. When is the last time you checked it?

1 A. Maybe last week.

2 Q. Where do you check it?

3 A. Where?

4 Q. Is there a particular service that you use?

5 A. I look on my iPhone.

6 Q. But you don't know if there's Bloomberg or --

7 A. No.

8 Q. Okay. So back up.

9 You don't know how many other permits in the other
10 states you're applying for; correct?

11 A. In general terms I do not.

12 Q. Okay. Are you able to tell us what percentage of
13 the product that will be shipped through the pipeline
14 will directly serve the energy needs of the residents of
15 the State of South Dakota?

16 A. No. I can't answer that.

17 Q. Is there any percentage of the product that will be
18 shipped that will directly serve the energy needs of the
19 residents of the State of South Dakota?

20 A. Well, if you look at it in a broad sense, you know,
21 we, you know, produce, refine those crude products or
22 derivatives that we all use every day, that most of us,
23 unless we walked, utilized those crude products to get
24 here today.

25 Now where those products originated from and what

1 refinery, I don't know. But I can safely assume that of
2 the, you know, nine or 10 million barrels that we
3 produced in this country, some of that came from the
4 Bakken, probably originated in refineries that supplied
5 some of the fuel that's being consumed here in
6 South Dakota.

7 Q. So you can't say with any certainty that there is
8 any percentage that would directly serve the residents of
9 South Dakota?

10 A. I can't.

11 Q. Okay. Line 160 of your testimony -- I don't know if
12 you have that in front of you or not, but it says
13 following construction 50 foot wide permanent easement
14 will be retained along the pipeline.

15 Can you tell us, in your words, what does permanent
16 mean to you?

17 A. What line?

18 Q. I'm sorry. Line 160.

19 A. Of what document?

20 Q. Your testimony.

21 A. Line 160 says, okay, following construction a 50
22 foot wide permanent easement will be retained along the
23 pipeline. Okay.

24 Q. Yeah. In your words, what's permanent mean?

25 A. What is permanent?

1 Q. Yeah. What's it mean?

2 A. What does this sentence mean?

3 Q. No. My question was pretty clear. In your words,
4 what does the word "permanent" mean?

5 A. Permanent means forever.

6 Q. Thank you.

7 Have the additional temporary workspaces that are
8 outside the construction right of way, have those been
9 identified yet?

10 A. Well, the construction right of way encompasses that
11 additional temporary workspace. So I don't quite
12 understand your question.

13 Q. Well, I'll direct you to your testimony starting on
14 line 162, and I'll read it. And it says, "Where
15 necessary, Dakota Access will utilize additional
16 temporary workspace outside of the construction right of
17 way." And I'm going to stop there.

18 A. Okay.

19 Q. So have you identified additional temporary
20 workspace that may be needed?

21 A. We have.

22 Q. You have?

23 A. Yes.

24 Q. Okay. And just so we're both clear, that is outside
25 of the construction right of way; correct?

1 A. Well, I think when this was being written, the ATWSs
2 were not 100 percent known at the time. Now that we know
3 where those are, so we consider that all to be part of
4 the construction work area or right of way. I think it's
5 semantics that we use in these two lines.

6 Q. Well, outside of the construction right of way is
7 pretty clear to me. Now it's just a semantic? Is that
8 what you're saying?

9 A. Well, it's a terminology. Construction work area is
10 a generic term we utilize in our business. Construction
11 right of way in my terms or what I would represent here
12 is that it's the area that we would use during
13 construction to build the pipeline.

14 Q. Am I in this room right now? Seriously. Am I?

15 MR. KOENECKE: Objection. Counsel's badgering
16 the witness. Argumentative.

17 MS. WIEST: Sustained.

18 MR. RAPPOLD: I'm just trying to clarify his
19 definition and understanding of the word "outside."

20 MS. WIEST: Then ask the question.

21 Q. If I were to walk out of this room right now and go
22 to the hallway, would you still consider me to be inside
23 of this hearing room?

24 MR. KOENECKE: Same objection.

25 MS. WIEST: Sustained.

1 Q. Are there any other -- so is this one of the
2 semantic changes that you were referring to earlier on in
3 your direct examination when you said there were some
4 minor changes?

5 A. Yes.

6 MR. KOENECKE: Objection. I don't think he said
7 semantics in his changes.

8 MS. WIEST: Could you rephrase? I don't believe
9 he said semantics.

10 MR. RAPPOLD: I think you're right. He just
11 recently said semantic.

12 Q. So this change -- this inaccuracy in your testimony
13 that I've just identified, is that one of the changes you
14 were referring to on your direct examination?

15 A. Well, I think it's a clarification on my part that
16 the ATWS is part of what we consider to be the
17 construction right of way. It's additional temporary
18 workspace outside the construction right of way, which
19 the previous lines spell out 150 feet.

20 Q. I'll move on.

21 In line 166 when you say the ATWSs will be allowed
22 to revert to preexisting conditions, how does that
23 happen?

24 A. Well, when we're done utilizing the area, we
25 reestablish the preexisting conditions, meaning the

1 grade, topography, could be vegetative cover. So
2 whatever it looked like prior to our use, we will restore
3 it back to that -- to that prior use and either allow it
4 to re-vegetate naturally or plant. Whatever needs to be
5 done.

6 Q. How would you restore native prairie grasslands to
7 its preexisting condition?

8 A. Well, we would, one, again, restore the elevations
9 and contours and then work with the -- a local seed
10 provider or a seed provider to purchase and replant with
11 native seed grasses the best we could.

12 Q. Do you understand that native prairie means it's
13 never been disturbed?

14 A. It could be used in that definition. Sure.

15 Q. Are you aware of it ever being used in that
16 definition?

17 A. I don't know where you're -- what your reference is.

18 Q. But you would agree that some people have said that
19 native prairie grassland is grassland that's never been
20 tilled?

21 A. It could be. It also could be has vegetation
22 similar to prairie that's never been disturbed. And in
23 the context of native.

24 Q. So you don't actually know what the scientifically
25 accepted definition of native prairie is, do you?

1 A. Well, no. I probably actually do. I'm not saying
2 that -- in the context you asked the question, you asked
3 if it was native or not, and I'm not really sure where
4 you're referring to.

5 Q. Can you share the definition of native prairie
6 grassland with the Commission?

7 A. The exact definition out of Webster's?

8 Q. Yeah. You just said you knew what it meant.

9 A. Well, I do know what it means. Native prairie has
10 grasses that are native to the eco region that you're
11 referencing.

12 Q. Okay. What types of damage can occur in the
13 additional temporary workspace -- what type of damage to
14 the land can occur to the additional temporary
15 workspaces?

16 A. Well, I don't know what the word "damage" really
17 means here in your context. Disturbance?

18 Q. Should I get a dictionary?

19 MR. KOENECKE: Again, counsel's being
20 argumentative.

21 MS. WIEST: Sustained.

22 Q. What type of damage do you think could occur? What
23 kind of harm do you think could occur in the preparation
24 of getting temporary workspaces prepared to use?

25 A. As far as harm goes, I wouldn't think there is harm.

1 There would be a temporary disturbance of the area that
2 we're utilizing. I don't think that necessitates harm.

3 Q. Would you cut trees up and remove them entirely?

4 A. Would we remove a tree?

5 Q. Yes.

6 A. It's possible if there's a tree there.

7 Q. Okay. So would you consider that action of removing
8 trees to be something that's either damaging or harmful
9 to additional temporary workspaces and to the land when
10 you're getting them ready?

11 A. I would consider removing a tree from the area that
12 we're utilizing. I don't know that it necessitates harm.
13 Again, I don't know what that means.

14 Q. What would you consider it?

15 A. I would consider it removing a tree from the area
16 that we're utilizing.

17 Q. Would you consider that to be of a temporary or of a
18 permanent nature?

19 A. The tree, if we've replanted a tree, then it would
20 be a temporary function.

21 Q. I'm not talking about replanting a tree. I'm
22 talking about the act of removing a tree. Is that
23 something you would consider to be temporary or
24 permanent?

25 A. No, that's permanent.

1 Q. That's permanent. Okay. Thank you.

2 How are you going to get to these areas?

3 A. What areas?

4 Q. The temporary workspace within the construction
5 right of ways.

6 A. We could travel down the construction right of way,
7 or we could utilize public roads or we could use
8 construction roads.

9 Q. Did you say you'd use public roads?

10 A. We could.

11 Q. Okay. Along the route in South Dakota have you
12 identified what roads you will use to get to the
13 construction right of way?

14 A. We've identified the majority that we believe we're
15 going to use, that we're working on with our contractors
16 and our construction team, yes.

17 Q. Do you know how many public roads, approximately,
18 you'd be using along the route?

19 A. Not off the top of my head.

20 Q. How about private roads?

21 A. No, I can't. I don't know the exact number.

22 MR. RAPPOLD: Can I go back to my desk for a
23 moment?

24 MS. WIEST: Go ahead.

25 MR. RAPPOLD: I'm sorry. I'll come back to that

1 later. It might take a while.

2 Q. Do you review any of the -- let me back up.

3 Do you know how many witnesses Dakota Access will be
4 putting on in their -- in its case?

5 A. No.

6 Q. Five?

7 MR. KOENECKE: Objection. Asked and answered.
8 We disclosed our witnesses.

9 MS. WIEST: Sustained.

10 MR. RAPPOLD: I'm trying to lay a little bit of
11 foundation for another question. I know how many
12 witnesses you're going to call. How many you've listed.

13 Q. Do you review any other witness's testimony before
14 it's filed?

15 A. Any other -- the general docket?

16 Q. Well, okay. Let me clear that it up. Specifically
17 Dakota Access witnesses. Do you review their testimony
18 before they file it?

19 A. As much as I can.

20 Q. Okay. Do you also participate in reviewing and
21 responding to discovery requests?

22 A. As much as I can.

23 Q. Do you review any of the other witnesses' responses
24 to discovery?

25 A. Some, yes.

1 Q. Have you reviewed Monica Howard's responses to
2 discovery?

3 A. Some.

4 Q. Do you know which portions?

5 MR. KOENECKE: I'd ask counsel to be more
6 specific. We can move along a lot faster on this if he'd
7 ask which ones whether he's reviewed that or not.

8 MR. RAPPOLD: I just did.

9 MS. WIEST: Did you have a specific one?

10 Q. Did you review Monica Howard's response to a
11 question that asked for updated information regarding all
12 of the permits that are listed in this Table 5.1 of her
13 direct testimony?

14 A. I would have to see it in front of me to be able to
15 answer that.

16 Q. Okay. I'm going to come back to that later.

17 How many road agreements do you have currently?

18 A. We do not have any.

19 Q. Do you have a rough idea how many road agreements
20 you're going to need?

21 A. No, I don't.

22 Q. Have you secured over-the-road transportation
23 permits?

24 A. To utilize the roads? I hate to fill in your
25 question, but maybe help me.

1 Q. To transport oversized material.

2 A. Do we have those?

3 Q. Do you have those, yeah.

4 A. Not that I'm aware of.

5 Q. Is there anyone else that would be aware of that?

6 A. Potentially Jack Edwards.

7 Q. Line No. 172 -- 171 to 172 you indicate that the
8 project may require construction of new temporary and
9 permanent roads to provide access to the new pipeline
10 both during construction and for future pipeline
11 maintenance activities.

12 Have you determined how many new temporary roads
13 you're going to need?

14 A. I believe we have a pretty good idea at this point,
15 yes.

16 Q. How many?

17 A. I couldn't tell you the number.

18 Q. How about permanent roads?

19 A. Again, I don't have that number memorized.

20 Q. So in line 173 and 174 of your testimony it states
21 that, "Access roads have not been thoroughly defined
22 during this early design phase."

23 Is that still accurate?

24 A. We have moved -- progressed the project much
25 further, and we have defined the majority of the roads

1 for construction at this point.

2 Q. So is this another one of the portions of your
3 testimony that's changed?

4 A. Well, this was written months and months ago, so I
5 think it's -- and it was an accurate statement at the
6 time. We are much further into the project so, sure,
7 it's going to be updated.

8 Q. I didn't ask you if this was an accurate statement
9 at the time that it was written. I asked you if this was
10 one of the things that should have been changed that you
11 referred to on your direct testimony?

12 A. It could have been, yes.

13 Q. It could have been?

14 A. It could have been.

15 Q. So it could not have been too; right?

16 A. Well, we're still defining those access roads. But
17 it could have been.

18 Q. Do you anticipate needing to construct new roads in
19 any wetland area?

20 A. I can't answer that.

21 Q. Why can't you answer it?

22 A. I'd have to look at our alignment sheets, our
23 topographic maps to answer it with certainty.

24 Q. Would your answer be the same for temporary roads?

25 A. That's correct.

1 Q. If you do have to build a temporary or permanent
2 road across a wetland or grassland easement, who will be
3 responsible for issuing the Permit for that?

4 A. Well, for a wetland would be the Army Corps of
5 Engineers. For grassland, you know, depending on what
6 the grassland is, who manages it, if there's another
7 easement. I don't know what the answer is for a
8 grassland without specificity on your question.

9 Q. Like specific location?

10 A. Yes.

11 Q. It wouldn't be the PUC, would it?

12 A. It could as part of the siting criteria.

13 Q. So you think the PUC would have the authority to
14 give you a Permit to build a road in a wetland or a
15 grassland easement that's managed by the Fish & Wildlife
16 Service?

17 A. Well, that's a little bit different question than
18 you just asked me. Do I think the PUC can give me a
19 superior right to an easement that's held by a landowner
20 in the U.S. Fish & Wildlife?

21 Q. Yeah.

22 A. No. They approve the siting.

23 Q. Of the route?

24 A. Correct.

25 Q. So ultimately Fish & Wildlife Service has the final

1 say so as to what happens on their easement; is that
2 correct?

3 A. Well, I think the technical answer is actually it's
4 the landowner has the ability to either issue us the
5 right to put a road on there or not.

6 Q. Well, actually I'm talking about the wetland and
7 grassland easements that are managed by the Fish &
8 Wildlife Service.

9 A. And so am I. Those do not have exclusivity imbedded
10 in almost any of them. And where they would, I would
11 agree with that statement, but the vast majority do not
12 have them in the State of South Dakota, and it's up to
13 the landowner to either grant that or not grant that.

14 Q. So have you identified where any of those roads may
15 be?

16 A. I'm pretty positive we know where those are. I
17 couldn't quote them.

18 Q. Have you ever heard of the Ramsar Convention on
19 Wetlands?

20 A. No.

21 Q. Are you familiar with the concept of a wetland of
22 international importance?

23 A. Not really, no.

24 Q. Do you recognize a wetland easement as a type of
25 land use?

1 A. No, I do not.

2 Q. Do you recognize a grassland easement as a type of
3 land use?

4 A. No.

5 Q. Do you think that it's possible that any other
6 federal agency could have concerns with any of the
7 permits that you're applying for with any federal agency
8 that are not addressed at this hearing?

9 MR. KOENECKE: Objection. That calls for
10 speculation.

11 MS. WIEST: Overruled.

12 THE WITNESS: Can you reread the question,
13 please.

14 (Reporter reads back the last question.)

15 MR. KOENECKE: Calls for the witness to assume
16 facts not in the question, not in evidence.

17 MS. WIEST: Overruled.

18 A. Yes.

19 Q. Have you received any communications from Fish &
20 Wildlife Service stating any concerns they may have with
21 any Permit Application you're applying for with the Fish
22 & Wildlife Service?

23 A. We've had plenty of communications with the Fish &
24 Wildlife Service. I don't know --

25 Q. The rest of the question was have you received any

1 communications regarding concerns.

2 A. Not in my opinion.

3 Q. Is there another witness that might have a different
4 opinion?

5 A. You'd have to ask each witness.

6 Q. Okay. Do you know what an unusually sensitive area
7 is in the context of 49 CFR 195.6?

8 A. In general terms. But I have a professional
9 engineer that certainly does, that helps with those
10 things.

11 Q. In general terms why don't you share with us what an
12 unusually sensitive area is then.

13 A. Well, I would have to break out the book. But it
14 could be water protection area, from a drinking water
15 protection area.

16 Q. It could be or it is?

17 A. Well, it could be.

18 Q. Are you aware of any other -- do you have any other
19 knowledge of what an unusually sensitive area is?

20 A. Well, I've read the definition at some point, and in
21 general terms I typically associate those with some type
22 of water feature is my general description.

23 Q. And that's generally about all you know about it?

24 A. Well, again, I employ professional engineers to know
25 that exactly, so as part of our design criteria.

1 Q. It says here on line number 19 you have a master's
2 of agriculture and range -- in rangeland ecology and
3 management?

4 A. That's correct.

5 Q. With an emphasis in rangeland and wetland ecology
6 management?

7 A. That's correct.

8 Q. And during the course of those studies, did you
9 study unusually sensitive areas?

10 A. Did I -- well --

11 Q. Did that come up in the course of your study?

12 A. No. That definition of Part 195 certainly did not.

13 Q. Do you know how many Fish & Wildlife Service
14 easements the route crosses? And I'm combining grassland
15 and wetland easements.

16 A. I don't know the exact number. A couple hundred, if
17 I remember right.

18 Q. Do you know how many wetland easements?

19 A. Outside of the U.S. Fish & Wildlife easements?

20 Q. No. How many Fish & Wildlife Service easements,
21 wetland easements, does the route cross?

22 A. Yeah, I think they're roughly the same. Just a
23 couple hundred.

24 Q. So then how many grassland easements are there?

25 A. I want to say, you know, maybe less than 10. I

1 don't have those numbers memorized.

2 Q. Do you know how many Fish & Wildlife Service
3 easements the route touches?

4 A. You know, I'm assuming it's the same. I don't know.

5 Q. So is it your opinion then -- do you differentiate
6 between crossing an easement and touching an easement?

7 A. Somewhat, yes.

8 Q. Is there a difference between the two?

9 A. There is.

10 Q. What's the difference?

11 A. Under some of the fish and wildlife easements,
12 they're generic easements on a piece of property that
13 have wetland areas specified as part of that easement.
14 Some of those properties we don't impact or cross the
15 actual wetland area that's protected, or contemplated is
16 the right word, under that easement. And then others we
17 actually cross through the wetland area. So that's how I
18 distinguish them.

19 Q. Just as a visual example, if this -- if this is the
20 pipeline, and this is the corner of an easement, would
21 you consider this location of my pen to be touching the
22 easement (indicating)?

23 A. No. It's not touching it.

24 Q. Okay.

25 A. Now it is.

1 Q. Okay. Is that basically an accurate understanding
2 or depiction of your understanding of what you just said?

3 A. No.

4 Q. It's not?

5 A. No.

6 Q. Okay. Do you know what the primary purpose for
7 these Fish & Wildlife Service easements is?

8 A. I have a general sense, yes.

9 Q. What is it?

10 A. Most of them were purchased as part of the Duck
11 Stamp Program. Most of those were bought underneath that
12 program. I think they go back to the '30s when that
13 program began to help preserve wetland habitat for duck
14 and goose reproduction.

15 Q. And is that the extent of the general sense of the
16 purpose of these lands that you have?

17 A. It is.

18 Q. Are you familiar with wetland -- let me strike that.
19 Has Dakota Access applied for a special use permit
20 from the Fish & Wildlife Service?

21 A. We are working with them on that, yes.

22 Q. So you've applied for a Permit?

23 A. We have. It's not a Permit. It's a Special Permit
24 Application -- they call it a special use permit, but we
25 have -- we're not an easement in the terms of a crossing

1 is not a permitted action under any regulatory program.
2 It's just their nomenclature for it. So it's not a
3 Permit that I need to construct.

4 Q. You don't need permission from Fish & Wildlife
5 Service? Is that what you're saying?

6 A. We need -- it's a good -- that is what I'm saying,
7 number one. So you're right. The easements are just
8 that. It's, in fact, an easement. So they don't have
9 superior use and/or -- unless it's an exclusive. And we
10 have a couple of those that we've had to route around.
11 But they're nonexclusive surface uses for the Fish &
12 Wildlife Service.

13 Q. What's the time line for receiving word from the
14 Fish & Wildlife Service?

15 A. Oh, it could be any month, any day. We've been
16 working with them for some time to develop best
17 management practices to cross through some of these
18 areas.

19 Q. It could be any time, but you don't know when that
20 time will be, do you?

21 A. I can't speak for them.

22 Q. And you don't know what they're going to tell you,
23 do you?

24 A. No. I can't speak for them.

25 Q. And you don't have a final route for the pipeline;

1 is that correct?

2 A. We have a pretty darn good route that, you know,
3 other than minor tweaks, you know, that we always run
4 into for landowner concerns. But we have, you know, a
5 pretty good final route. It's just not blessed by the
6 PUC. And so until it is, it's not final.

7 Q. And so the answer to that question is really no?

8 A. I guess so.

9 Q. Do you know -- we talked earlier about other state
10 permit hearings that you have to go through.

11 Do you know when the North Dakota hearing is
12 scheduled?

13 A. They've already occurred. They're on public notice
14 for maybe one additional one based on some reroutes.

15 Q. What about the Iowa hearing?

16 A. They start on November the 12th, and I forget how
17 long they go through.

18 Q. And what about Illinois?

19 A. Illinois's already concluded.

20 Q. Folks have talked about land restoration after
21 construction. Are you familiar with any specific
22 instances where restoration hasn't really worked as good
23 as you thought it was going to?

24 A. You know, I mean, that's a pretty broad question
25 of -- in my experience? Sure. We've had instances where

1 we've had to go back and reclaim land more than once.

2 Q. More than twice?

3 A. In some circumstances more than twice.

4 Q. More than three times?

5 A. I don't know.

6 Q. Don't know? Okay.

7 Did you have any contact or are you aware of any
8 contact by Dakota Access to the Rosebud Sioux Tribe
9 regarding this pipeline?

10 A. No. I'm not aware of any.

11 Q. I've noticed that your testimony doesn't really
12 address any damage to the land that could arise from
13 pipeline operations through either a breach or a spill.

14 Is there a reason that's not addressed in your
15 testimony?

16 A. No.

17 Q. No reason?

18 A. No.

19 Q. Is that something that you're normally involved
20 with?

21 A. It's something I ensure that we have plans for, but
22 we have our VP of operations here that is certainly
23 responsible for that.

24 Q. So that's why you didn't touch on it in your
25 testimony?

1 A. That's correct.

2 Q. But it states here that you're ultimately
3 responsible for operations; correct?

4 A. I'd have to read that. I don't think --

5 Q. Line No. 13.

6 A. Let me read it. Ultimately operations -- yeah. So
7 the way that it works in the corporate world, I am
8 delegated authority by our board, actually from -- from
9 my boss to me who's the delegated authority by our board.

10 And I'm responsible to ensure that the project is
11 developed and executed and ultimately operated, you know,
12 according to the plans. At some point I do hand it off
13 to the appropriate individual.

14 Q. And is that why your testimony doesn't address
15 damage to the land that could arise from pipeline
16 operations?

17 A. Well, I think we have the right expert here that can
18 answer those questions, and that's certainly not me.

19 MR. RAPPOLD: No further questions. Thank you.

20 MS. WIEST: Ms. Craven, do you have any
21 questions?

22 MS. CRAVEN: I do.

23 CROSS-EXAMINATION

24 BY MS. CRAVEN:

25 Q. Thank you. Mr. Mahmoud? Is that how you say your

1 name? Did I get it right?

2 A. No. Mahmoud.

3 Q. Mahmoud. Missed that second syllable. Okay.

4 You were asked if you had assessed the potential
5 impact of the facility on the community, and you
6 responded yes, you did.

7 Would you please share with us what social impact,
8 assessment, training, or education you have?

9 A. Social --

10 Q. Impact, assessment, training, or education.

11 A. None. Just project experience.

12 Q. I saw that you have a bachelor's in animal
13 management and then a master's in land management.

14 A. I have a bachelor's of science in animal science and
15 a master's of agriculture and rangeland ecology.

16 Q. Sounds like you started out to be a cowboy.

17 A. I don't think so, no.

18 Q. Describe the activities in your community assessment
19 that were undertaken to ensure that DAPL's potential
20 impact on Native American communities were taken into
21 account on your assessment.

22 A. Well, what we did to determine if we had a potential
23 of impact of Native American communities is during our
24 routing studies, we had our team identify where we cross
25 through tribal land.

1 We actually do cross through the 3 Affiliated
2 tribal's land. Not their reservation, but some feed
3 property that they own in North Dakota. And that was our
4 only tribal ownership that we crossed. So we went
5 through that delineation.

6 Q. So were you actually involved in those assessments?
7 Did you go out and meet the 3 Affiliated Tribes and see
8 the ranch?

9 A. I personally have been doing all of that
10 negotiation.

11 Q. But did you go see the ranch?

12 A. I have not been on the ranch. But I have been to
13 Chairman Fox more times than I can count.

14 Q. And when you were with the 3 Affiliates, did you
15 talk to them about the impacts on their community?

16 A. Many times.

17 Q. Okay. Will you identify where in the record your
18 assessment of the community impact does, in fact, take
19 into account DAPL's potential impact on Native American
20 communities?

21 A. I'm sorry. You read that way too fast. Can you
22 repeat it?

23 Q. Yes. Will you please identify where in the record,
24 your testimony, or in the record, your assessment of the
25 community impacts does, in fact, take into account DAPL's

1 potential impact on Native American communities?

2 A. No. I probably could not do that. The record's too
3 large. I could do some research and talk to my team.

4 Q. You testified on DAPL's expected impacts on
5 commercial and industrial sectors. Your testimony
6 included estimates of direct spending, indirect and
7 induced spending, estimates of production and sales and
8 the number of rental units east of the river.

9 A. Yes, ma'am.

10 Q. Are you a housing expert?

11 A. No.

12 Q. Okay. Did you count the number of rental units
13 along the pipeline route?

14 A. I did not personally.

15 Q. Okay. Would you describe your credentials to
16 conduct economic analysis, please?

17 A. Well, I don't have any educational credentials, but
18 I've certainly worked on many projects in my lifetime.
19 But we did hire a outfit to help us through that economic
20 impact assessment.

21 Q. And what was that outfit?

22 A. SEG, Strategic Economics Group, out of Iowa.

23 Q. Have you published any academic papers on induced
24 spending from oil and gas pipeline projects?

25 A. No.

1 Q. Have you published any academic reports on the
2 rental housing available in South Dakota?

3 A. No.

4 Q. Will you tell me in the report how was induced
5 spending calculated?

6 A. I would have to pull the report, and I can probably
7 read it and we can talk about it.

8 Q. Okay. In the draft -- the DAPL -- it's the draft
9 DAPL Easement Environmental Assessment that was submitted
10 to the U.S. Fish & Wildlife Service. It has no authors.
11 Who actually completed that report?

12 A. In the what document?

13 Q. It's called the DAPL Easement Draft EA. And it's
14 dated June 18, 2015.

15 A. Can you -- you're going to have to show me the
16 document.

17 MS. CRAVEN: Does anybody have a copy of that?

18 MR. RAPPOLD: I do.

19 Q. This is the report that talked about the threatened
20 and endangered species and going through the wetlands and
21 the grasslands and stuff.

22 A. Sure.

23 (Counsel hands document to witness.)

24 A. Okay.

25 MR. KOENECKE: Have you got a copy of that for

1 everybody?

2 MS. CRAVEN: Pardon me?

3 MR. KOENECKE: Do you have a copy of that for
4 everybody to look at?

5 MS. CRAVEN: Not right now. It's your report.

6 MR. KOENECKE: Which is it? What exhibit is it?

7 MS. CRAVEN: It's the Dakota Access --

8 MS. WIEST: You need to read into the mic.

9 MS. CRAVEN: It's the Environmental
10 Assessment -- it's the U.S. Fish & Wildlife Service
11 Environmental Assessment Grassland and Wetland Easement
12 Crossings written June 2015 by Dakota Access.

13 MR. KOENECKE: Where did you find it?

14 MS. CRAVEN: In discovery.

15 MR. KOENECKE: We produced it in discovery?

16 MS. CRAVEN: Yeah. You did. Yeah. I had a
17 hard time tracking it down because it was sent to
18 Yankton.

19 MR. KOENECKE: Very good.

20 THE WITNESS: Thank you.

21 Q. Did you write that report?

22 A. I did not personally.

23 Q. Who wrote that report?

24 A. Perennial Environmental Services.

25 Q. Would you please describe the authors of the report

1 and their credentials for producing that report.

2 A. Well, they're professional biologists, most of them.

3 We can get their resumes for you if you need them.

4 Q. What are their names?

5 A. I probably have to go look them up instead of -- I
6 mean, I know who Perennial is and that we hired them, and
7 Monica Howard could probably answer that directly.

8 Q. Okay. But this goes directly to your testimony
9 regarding the assessment of the route; correct?

10 A. Uh-huh. Yes.

11 Q. Okay.

12 MS. CRAVEN: I would like to renew my objection
13 to his testimony based on Rule 602. And it states really
14 clearly that Rule 602 provides that before a witness can
15 testify, evidence must be introduced to support a finding
16 that he or she has personal knowledge of the subject
17 matter and she cannot simply testify to knowledge based
18 on what others have told her. Or him.

19 And he really has no direct knowledge of that
20 report and that environmental assessment, as it has to go
21 to this route through the wetlands and the grasslands,
22 and that's exactly what he's testifying to.

23 He's also testifying to the impact on health and
24 energy, and transportation, ag, taxes, and he's just
25 admitted he has no personal knowledge. It's all things

1 that he's read -- gotten from other people.

2 MS. WIEST: Did you have a response,
3 Mr. Koenecke?

4 MR. KOENECKE: I think the objection overstates
5 what Mr. Mahmoud's testimony was. As far as Rule 602,
6 I'd have to look that up and would request a short recess
7 in order to do that.

8 Can I have five minutes?

9 MS. WIEST: Go ahead.

10 MR. KOENECKE: Thank you.

11 MS. CRAVEN: Do you want to take this up in the
12 morning? It's 5 o'clock.

13 MS. WIEST: I think we were going to go later
14 actually.

15 (A short recess is taken)

16 MS. CRAVEN: I have the rule here if you'd like
17 me to read it.

18 MS. WIEST: I believe Mr. Koenecke was going to
19 respond.

20 MR. KOENECKE: Ms. Wiest, the first thing I'd
21 ask is to have the objection read back.

22 (Reporter reads back the objection.)

23 MR. KOENECKE: Thank you. There's a number of
24 comments that I'd like to make in respect to this
25 situation.

1 I think the objection was properly overruled the
2 first time it was made, and so I'd like to point that out
3 for everybody's benefit.

4 The objection is based on Rule 602 which is
5 codified at 19-19-602. I think it would be instructive
6 for all of us to consider the succeeding Article 7 on
7 opinions and expert testimony as well.

8 I think that's probably more applicable rule,
9 given the situation we're under here.

10 MS. CRAVEN: But he's not --

11 MR. KOENECKE: I'm not finished, please.

12 MS. WIEST: Please don't interrupt.

13 MR. KOENECKE: Ms. Craven made a shotgun
14 objection or a complete objection to apparently all of
15 Mr. Mahmoud's testimony. I'm not exactly clear what that
16 is. I think we'd have to unbundle Mr. Mahmoud's
17 testimony line by line in order to determine whether the
18 objection should be sustained or overruled. I don't
19 think that's in anybody's interest. It's certainly not
20 in mine, and I question whether it's in anybody else's.

21 The Application is clearly at issue in this
22 proceeding, and Mr. Mahmoud put the Application in
23 evidence so that everybody could start to ask questions.

24 We have a number of witnesses, subject matter
25 experts, who are going to follow Mr. Mahmoud, and a

1 number of questions this afternoon are more properly
2 placed. And perhaps we were not clear enough in the
3 written testimony as to who would be testifying to which
4 parts of the Application.

5 But be that as it may, I find it somewhat
6 illogical to be sitting here defending Ms. Craven's
7 objection to her own question.

8 She pulled out a piece of information that we
9 provided in discovery and is seeking to impeach
10 Mr. Mahmoud with that when he never testified or put that
11 document with the Fish & Wildlife Service matters in it.

12 It would take a tremendous amount of time to
13 unbundle this objection, and I think it should just
14 simply be overruled and move on.

15 MS. WIEST: The objection is overruled.

16 You can go on, Ms. Craven.

17 MS. CRAVEN: Okay.

18 Q. You've testified that DAPL will employ a total of
19 1,448 construction personnel, including inspectors. Is
20 that correct?

21 A. I would have to find it in my testimony. Our
22 current projection is closer to -- somewhere between
23 2,500 and 3,400.

24 Q. And how do you know that information?

25 A. Working with our contractors that we are going to

1 enter into a contract with and working with them on the
2 construction plans.

3 Q. So is there a report to that effect?

4 A. No.

5 Q. Please explain the significant discrepancy
6 between -- okay. Let me back up.

7 John Edwards, who is going to be testifying, and we
8 have amended testimony of his that was just introduced
9 yesterday so we haven't yet figured out how it has
10 changed, testified that the two construction spreads for
11 DAPL will employ a total of 1,800 construction personnel
12 and inspectors.

13 That's on line 20 of his testimony.

14 A. Okay. You would have to show it to me.

15 Q. Would you like me -- okay.

16 MS. CRAVEN: It's changed now in the new
17 testimony. It's hard to prepare questions when the
18 testimony changes overnight, so I will just go on. I
19 will note that for the record.

20 Q. But there is a discrepancy between the original
21 filed testimony by Mr. Edwards of 1,800 people and your
22 1,448 people. That's like over 500 people -- or 300
23 people.

24 Could you explain the discrepancy between the
25 employment estimates and that of Mr. Edwards?

1 A. I can. Sure. Jack Edwards -- and he's here. When
2 we were putting the Application together, we had not
3 identified our contractors yesterday. At this time we
4 have identified who we believe to be the successful
5 contractor in the State of South Dakota.

6 Before we had identified that, we thought there
7 would be two construction spreads. Now based upon our
8 contractor's projection, they're going to have three
9 spreads.

10 Q. Three construction spreads. Okay.

11 A. That's correct.

12 Q. So then Mr. Edwards says in his new testimony
13 that -- let me find that. Line 20, that there are going
14 to be 900 personnel per spread, and approximately 1,000
15 inspection staff. So is that 1,000 staff per spread? So
16 is that 3,000 people, or are you going to take those
17 1,000 people and move them around?

18 A. Ma'am, I don't have his testimony in front of me,
19 and I think you could ask him exactly what he said or
20 produce the document so I can quickly read it.

21 Q. Well, there's a discrepancy I'm trying to get
22 clarity on.

23 A. Okay. And what is this?

24 Q. That is Mr. Edwards' revised testimony that has not
25 yet been entered into the record officially but was filed

1 as their prefiled testimony. This is the amended version
2 of it. You guys amended it yesterday.

3 MR. KOENECKE: I think the question's properly
4 laid for Mr. Edwards when he testifies. Mr. Mahmoud can
5 testify to what he knows. Mr. Edwards can testify to
6 what he knows. And then Ms. Craven can make her argument
7 as to which is right.

8 MS. WIEST: Objection overruled. She can ask
9 him about any inconsistency.

10 A. I don't even know where you were reading. I'm
11 sorry.

12 Q. Let me read it into the record so we all know what
13 I'm talking about.

14 "There will be one full-time pipeline spread in
15 South Dakota and two partial spreads. Each pipeline
16 construction spread will have approximately 900 personnel
17 including subcontractors and approximately 100 inspection
18 staff, which includes right of way and administration
19 staff." And then it goes on to what they do.

20 So I'm just trying to figure out how many people
21 will be working on these construction spreads and how do
22 you manage them since you're the manager?

23 A. Okay. So, one, we were very consistent with what I
24 just said. There's three spreads. So two partials plus
25 one is three. Okay. There's three independent spreads.

1 Q. Uh-huh.

2 A. And there's about 1,000 people per spread, about 900
3 construction workers, and about 100 inspectors. That's
4 1,000.

5 Q. Uh-huh.

6 A. So I don't think I said anything inconsistent.

7 Q. Okay. In your testimony on page -- on page -- line
8 216 of your testimony, you have testified that there
9 would be approximately 1,448 people in South Dakota
10 constructing this pipeline.

11 A. Yes.

12 Q. So is it 1,448 people, or is it 3,000 people or --
13 because Mr. Edwards' testimony makes it sound like
14 there's 3,000 people.

15 A. As I just said, my testimony was based upon months
16 and months ago before we had identified a contractor.
17 Now we've identified the contractor we believe -- we are
18 in final negotiations -- that we're going to hire.

19 There's going to be three spreads in South Dakota,
20 each one consisting of about 900 people, plus inspection
21 is another 100 on top of that, per spread. That's 1,000
22 per spread. That's 3,000 people total on constructing in
23 South Dakota.

24 Q. So your testimony that you submitted for the record
25 is incorrect?

1 A. It's not incorrect. It's just outdated. It was
2 correct at the time it was filed.

3 Q. But that number of 1,448 people is no longer
4 correct?

5 A. It's no longer correct.

6 Q. Okay. Thank you. And how is the demand for the
7 DAPL determined?

8 A. Demand for what portion?

9 Q. The entire thing.

10 A. In what regard?

11 Q. How do you determine that there's a demand for this
12 pipeline? How did you go about doing that?

13 A. We went through what are called open seasons. So we
14 present the project to the public, to the entire public.
15 Anybody can take space on this project. It's what's
16 called an open access pipeline. That's the open access
17 part in the tariff are regulated under what's called the
18 FERC, Federal Energy Regulatory Commission.

19 So under their rules, we go through an open season.
20 And under the open season, people can nominate for
21 capacity on the pipeline. And then based upon the
22 negotiations with those nominating parties, they either
23 get capacity or they don't, and that's how we generated
24 the need as we had people and companies that solicited
25 bids on the project to transport their crude oil on this

1 pipeline.

2 Q. And what was your role in that? What did you do?

3 Did you have these meetings or --

4 A. Me personally? I have staff of commercial people
5 that do this.

6 Q. So you have no real personal knowledge of putting
7 the demand together?

8 A. Of the demand together?

9 Q. Yeah. Yeah.

10 A. For the project?

11 Q. Yes.

12 A. Well, no. Of course I have personal knowledge of
13 how that works.

14 MS. CRAVEN: Would you please read back the
15 answer to his last question.

16 (Reporter reads back the requested portion.)

17 MS. CRAVEN: I would like to renew my objection.
18 He is testifying over and over to things that he has no
19 personal knowledge of. I would like to read the Rule 602
20 so that we can see that he does not know this
21 information.

22 He's read reports. He's saying he knows it, but
23 he has not actually done it himself. He hasn't gone out
24 and counted housing units. He did not participate in the
25 assessment. He doesn't know how that's not his area of

1 expertise. He can testify to things he knows.

2 Competent testimony under Rule 602, I will be
3 glad to read it into the record so we all know, but he's
4 read different reports and got information from Staff.
5 It's combined in his testimony, and it should be
6 excluded. And I particularly would like to exclude -- I
7 would like to strike lines 226 to 262, the assessment of
8 the route, the economics, the community impact. He has
9 no personal knowledge of that.

10 Lines 277 through 287, the DAPL impacts on
11 health and energy. He knows nothing about that. He has
12 no personal knowledge of that.

13 And then the rest of the report, 339 to the end,
14 DAPL impacts on transportation, agriculture, taxes, and
15 community. He does not have personal knowledge of that,
16 which you have to have under Rule 602. Lack of personal
17 knowledge, a witness may not testify to a matter unless
18 evidence is introduced sufficient to support a finding
19 the witness has personal knowledge --

20 MS. WIEST: Could you slow down, please.

21 MS. CRAVEN: Yeah. A witness may not testify to
22 a matter unless evidence is introduced sufficient to
23 support a finding that the witness has personal knowledge
24 of the matter. Evidence to prove personal knowledge may
25 but need not consist of the witness's own testimony.

1 This rule's subject to the provisions of Rule 703 related
2 to opinion testimony by expert witnesses.

3 But I want to cite a case as explained in the
4 Federal Court case United States v. Bassarell-Lopez,
5 witness testimony based not upon personal observation,
6 but upon a report they read, must be excluded.

7 MS. WIEST: I believe I already overruled most
8 of these objections before, and I will overrule your
9 objection again.

10 MS. CRAVEN: Okay. Well, I just want that in
11 the record.

12 MS. WIEST: It is in the record. You can go on.

13 MS. REAL BIRD: Your Honor, can the Yankton
14 Sioux Tribe joining in that motion be noted in the record
15 as well.

16 MS. WIEST: So noted.

17 MR. RAPPOLD: Same with Rosebud.

18 MS. WIEST: So noted.

19 Q. Do you look at the price of oil?

20 A. Do I personally?

21 Q. Yes.

22 A. Not often.

23 Q. No?

24 A. No.

25 Q. Is it increasing or decreasing?

1 A. It's fluctuating.

2 Q. How?

3 A. Well, it's trading between 40 and 50 something bucks
4 on a weekly basis, daily basis.

5 Q. What did it used to trade at?

6 A. In what time frame?

7 Q. Like last year.

8 A. In the 90s to 100.

9 Q. So would you say that's a decrease?

10 A. In general terms, yes.

11 Q. Okay. Do you look at national trends for demand of
12 oil?

13 A. Do I look at?

14 Q. National trends for demand of oil.

15 A. Do I?

16 Q. Yes.

17 A. Sometimes.

18 Q. Is it increasing or decreasing?

19 A. It's about the same.

20 Q. Can you tell me who the shippers are for DAPL?

21 A. No, I cannot.

22 Q. Is the reservation of 10 percent of the pipeline's
23 capacity for walk-up shippers an indication of a lack of
24 demand for the pipeline?

25 A. No. It's actually a statutory rule under the FERC

1 regulations to maintain 10 percent of the pipe capacity
2 for walk-up capacity.

3 Q. And are you subject to the FERC regulations?

4 A. We are.

5 Q. Okay.

6 A. From a tariffs perspective.

7 Q. From a tariffs perspective?

8 A. That's correct. Not for siting or routing and/or
9 the environmental.

10 Q. You testified that DAPL will have no permanent
11 effect on agriculture in South Dakota. Could a release
12 of oil in an aquifer used to grow hay or alfalfa have a
13 permanent effect on a farm or livestock operation?

14 A. If not properly remediated in the -- my imagination
15 says yes.

16 Q. What all will be with the crude oil when it comes
17 down the pipeline? Could you tell us what else is in it?
18 You don't know?

19 A. The constituents of crude oil?

20 Q. Uh-huh.

21 A. No. I couldn't tell you exactly what's in there or
22 not in there.

23 Q. So in planning a remediation of agriculture land,
24 you're just planning on crude oil and no other chemicals;
25 is that correct?

1 A. No. That's not correct.

2 Q. Okay. Well, what other chemicals are you planning a
3 remediation for?

4 A. Well, one, I have people here that can probably
5 answer that a lot better than I can. But as far as what
6 our remediation's going to be, I couldn't tell you
7 because it would be site specific every single time.

8 Q. And is one of the exhibits admitted along with your
9 testimony is the Agricultural Mitigation Plan?

10 A. One of my exhibits?

11 Q. Yes.

12 A. In the overall Application, yes.

13 Q. Yes. But you can't say really very many specifics
14 about that? It's --

15 A. I know it in general terms. I have certainly
16 reviewed it.

17 Q. Okay. How would we -- what kind of chemicals are
18 you all planning to remediate besides the crude oil in
19 the --

20 MR. KOENECKE: Objection. I don't think he said
21 that.

22 MS. CRAVEN: I'm asking how the agriculture
23 mediation [sic] plan plans to incorporate the other
24 chemicals that are in the crude oil.

25 MR. KOENECKE: The Ag Mitigation Plan is

1 construction and not operational. It has nothing to do
2 with that.

3 MS. CRAVEN: So when will we find out that
4 information?

5 MS. WIEST: Can you rephrase your question?

6 Q. Do you know when we will find out that information
7 about remediating with a spill from other chemicals
8 besides the crude oil?

9 A. No. I don't. I mean, the crude oil is considered a
10 common stream, number one. We have an Emergency Response
11 Plan that we've filed with the Commission that addresses
12 our emergency response plans. We have our VP of
13 operations, Todd Stamm, that could probably answer that
14 specifically for you.

15 Q. South Dakota Law requires the replacement of a water
16 source if the well is polluted. Are you aware of that?

17 A. Generally I am, yes.

18 Q. The South Dakota Legislature in requiring
19 replacement of a water source upon contamination of a
20 well contemplated the possibility of a permanent effect
21 to agriculture supplied by the well.

22 Do you agree?

23 A. I would have to read the whole thing. You're
24 reading an excerpt. I'd be happy to read it, though.

25 Q. What is the permanent impact to a family farm?

1 A. There is none.

2 Q. So if the crude oil -- if there's a failure or a
3 spill or a leak, everything's going to be hunky-dory in
4 the next day? There's no time frame for re-vegetation or
5 production of crops?

6 A. All very speculative, hypothetical. I can't tell
7 you what the answer or potential impact or restoration
8 would be because I don't know the circumstance.

9 Q. Okay. If you spill oil in a corn field --

10 A. Okay.

11 Q. -- how long does it take before you can grow corn
12 again?

13 A. Not a chance I can tell you that.

14 Q. Okay.

15 A. I don't know how much spilled, you know, where it
16 spilled, what the topography was, how much moisture was
17 in the soil. It's very specific and very site specific
18 on what the remediation and impact could be in a
19 circumstance like that, so I can't answer it.

20 Q. So what was your role in preparing that agriculture
21 mediation plan that was introduced along with your other
22 testimony?

23 A. So that plan is a construction document.

24 Q. Uh-huh.

25 A. So I worked with our construction manager, project

1 manager in making sure that it was a document that would,
2 you know, lead to the least amount of impacts from our
3 project on agriculture lands to make sure that we topsoil
4 segregated correctly, to make sure that we repaired drain
5 tiles correctly, and to make sure that we're burying pipe
6 to the adequate depth.

7 So we worked together and reviewed and approved
8 those plans as far as, you know, the preparation of
9 those.

10 Q. Did you write any of them?

11 A. I'm sure I commented on certain parts of it. You
12 bet.

13 Q. So you commented, but you didn't write any of it.
14 You just read it. You read it and edited it?

15 A. No. I actually wrote certain parts of it.

16 Q. You wrote. What parts did you write?

17 A. Well, we can break it out, and I can probably find
18 my language in there.

19 Q. And you just said you didn't write it, that you read
20 it and commented. Now your testimony is that you did
21 write some of it?

22 A. Well, comments actually equal writing in certain
23 circumstances. So, you know, you're filling in words
24 that are not mine.

25 Q. Okay. So you have a lot of experience in ag

1 science. I imagine that has to do some with a family
2 farm?

3 A. I own a ranch.

4 Q. Okay. Can a family farm stay in business with a
5 reduced crop yield for 10 years?

6 A. Well, it depends on what their other income sources
7 are. It's theoretical, sure.

8 Q. If it's just crops, though, is that possible? If
9 they solely depend upon crops, they'll have to diversify,
10 is that what you're saying?

11 A. Well, I don't know what their other income sources
12 are, if they have loans, what ag programs they have. I
13 don't know their circumstance.

14 MS. CRAVEN: So I'm done. Thank you.

15 MS. WIEST: Mr. Boomsma, any questions?

16 MR. BOOMSMA: Thank you. I do have a few quick
17 questions.

18 CROSS-EXAMINATION

19 BY MR. BOOMSMA:

20 Q. Mr. Mahmoud, would you go to your direct testimony
21 document?

22 A. Sure.

23 Q. What's the exhibit number on that, sir?

24 A. This one that I have in front of me says DAPL 30.

25 Q. I'd like to ask you questions about lines 387

1 through 409. Could you turn to that, please.

2 A. Okay.

3 Q. You're offering testimony at that point about the
4 impact on pastureland and rangeland.

5 Do you see that?

6 A. I do.

7 Q. If I got the testimony right, you're saying that in
8 one to three growing seasons, the topsoil will recover
9 after the pipeline is installed.

10 Do you see that?

11 A. That is absolutely not what that says.

12 Q. No. Tell me what your testimony is in terms of when
13 that topsoil will recover.

14 A. Well, what do you want me to answer first, what it
15 says or the topsoil restoration?

16 Q. Topsoil restoration. I want to know what your
17 position is, sir, as far as when you think that topsoil
18 that's put back on top of the pipeline is going to fully
19 recover.

20 A. I couldn't tell you. I mean, I would anticipate its
21 productivity to be the same within one to three years.

22 Q. So my question is: What facts do you have to
23 support that statement or conclusion?

24 A. Well, one, I know quite a bit about soils from my
25 background. That is actually something that I can

1 testify to.

2 Second thing is from a practical matter, we have
3 thousands of miles of pipelines in agriculture fields. I
4 mean, we own 72,000 miles. We're about to own about 130
5 after sometime next year.

6 You know, we have lots of pipes in the ground that
7 support the conclusion that if done properly and restored
8 properly, that crop yields will not reduce.

9 Q. What recourse is available to the landlord if you're
10 wrong?

11 A. Quite a bit. If we're wrong and we negatively
12 impact that landowner, their production and yield -- and
13 it's not just hearsay that, hey, my crop yields have been
14 reduced, but it's a legitimate impact to that individual,
15 we certainly would compensate that landowner for their
16 loss.

17 Q. Isn't it true, sir, that you pay the landowner an
18 upfront payment for the easement, but if something goes
19 wrong after the fact, for example, this topsoil does not
20 return to its productive level, that they're out -- they
21 don't get any more compensation; fair or not fair?

22 A. Well, one, very false, and, two, unfair. Not fair
23 to use your words.

24 Q. So your testimony -- I need to understand this.

25 Are you going to offer more compensation to the

1 landowner later if that topsoil's productivity is not
2 restored in that one- to three-year time frame?

3 A. If productivity yields actually do reduce and do not
4 restore after our payments, the answer to that is yes.

5 Q. Because part of the easement payment is you're
6 proposing to pay the landowner for crop yield loss within
7 the one- to three-year period of time; right?

8 A. That's correct. That's a factor.

9 Q. But your testimony under oath right now is that if
10 there is crop loss, productivity that extends past the
11 three years, you'll pay the landowner more money?

12 A. Me personally, I will not.

13 Q. The company, of course, sir. You know that.

14 A. Well, I have to be clear with the questions.

15 Q. Fine. What is your answer?

16 A. My answer is yes. I've said that publicly many
17 times.

18 Q. Now you also give testimony in pages 401 to 402 of
19 your prefiled testimony document that Dakota Access will
20 restore all lands equivalent to adjacent off right of way
21 lands.

22 Do you see that?

23 A. Yes.

24 Q. What testimony or facts can you offer us right now
25 today to support that statement or conclusion?

1 A. That we will do a comparative analysis when we
2 restore our right of way to the adjacent land that's
3 undisturbed during construction. That's our commitment.
4 That's my testimony.

5 Q. So, again, is it your testimony that if that land is
6 not restored to the exact same condition as the adjacent
7 land, that you'll compensate the landowner for more
8 money?

9 A. That's not what I'm saying.

10 Q. Why wouldn't you compensate the landowner for those
11 losses if that right of way land is not restored to the
12 same condition as the other land?

13 A. It may not matter. It may not be something that's
14 compensable. I don't know. I mean, that's a pretty
15 broad statement. I'm not sure that I can answer that.

16 Q. Well, explain for me why you wouldn't view that to
17 be compensable if that land's not restored to its normal
18 state?

19 A. Well, it could be back to its normal state, but in a
20 production -- in a production scenario, if there's not
21 loss of yield, it may not have an impact that would be
22 compensable underneath the terms that I believe we're
23 sitting here talking about.

24 Q. Are you aware of any similarly situated agricultural
25 land in which an oil pipeline has been installed where

1 productivity in that easement area has not been restored
2 within the one- to three-year period of time?

3 A. No. I'm not.

4 Q. You are not?

5 A. No.

6 Q. So if I bring witnesses in that testify about how
7 they have a pipeline going through their agricultural
8 land and that land's productivity still isn't restored
9 five years, seven years, 10 years later, those witnesses
10 are just full of it?

11 A. No. I'm not saying that.

12 Q. So are you saying that that can't happen, or are you
13 saying you just don't know about whether it could?

14 A. No. I would imagine it could happen, depending upon
15 who the operator or constructor was. I have no control
16 over what happened in the past for those individuals --

17 Q. So why are my landowner clients supposed to feel all
18 fuzzy about this pipeline if you --

19 MR. KOENECKE: Could we at least allow the
20 witness to finish his answer. Several times now the
21 questioner has talked over my witness's answer. I'd like
22 that to stop.

23 MS. WIEST: Yes. Mr. Boomsma, if you would not
24 talk over the witness, especially for Cheri's benefit.

25 MR. BOOMSMA: I'll do that.

1 Q. My question now is why would my landowner clients
2 feel all warm and fuzzy about this pipeline if you can't
3 give them any assurances that productivity in the
4 easement area will, in fact, be restored in that one- to
5 three-year period of time?

6 A. I give them our commitment. We're paying them for
7 their easement at market value or more. So we're taking
8 care of the -- you know, the use or rights of that land.
9 We're compensating them for whatever those potential
10 impacts are.

11 If there are longer-term impacts that we have
12 not properly contemplated, they'll be compensated. I
13 don't know what else we can do to help facilitate that
14 other than not build the pipe, which is not really an
15 option for my company.

16 Q. Have you had any involvement with contacting
17 landowners in this particular case?

18 A. I've had some. Very limited.

19 Q. What is the extent of your involvement?

20 A. It could be the final negotiation on certain terms.

21 Q. Anything --

22 A. Or upfront.

23 Q. Any involvement beyond that?

24 A. I've met with some of the landowners. I've gave
25 presentations to hundreds of people throughout this

1 process and have had conversations with them after those
2 meetings or sometimes I've gone with our folks to go meet
3 with them one-on-one.

4 Q. Have you been involved in the decision-making
5 process of suing my clients once you don't get what you
6 want from them?

7 MR. KOENECKE: Objection. Land acquisition's
8 outside the scope of this proceeding.

9 MR. BOOMSMA: My response to that is that this
10 proceeding involves an element of fairness, and that's
11 the element I'm talking about. It is relevant.

12 MS. WIEST: Overruled.

13 THE WITNESS: Does that mean I answer? I'm
14 sorry.

15 MS. WIEST: Yes.

16 A. Yes. I was the one that made that decision.

17 Q. In fact, some of my clients already have been sued
18 two times over by your company; correct?

19 A. I think that's probably correct.

20 Q. And even in one case in Lincoln County when a judge
21 struck down your request to have survey rights, you then
22 still chose to sue them again, and you started that
23 lawsuit about a week ago; is that right?

24 A. I believe that's correct.

25 Q. And so how is that fulfilling your element of

1 fairness to these landowners?

2 A. Well, I mean, we've been working at this for over a
3 year. We've had multiple, multiple considerations.
4 We've attempted to negotiate in good faith. And when the
5 conversations just end or they terminate where the
6 landowner no longer wants to visit with us, they force us
7 into a corner.

8 In the particular case in Lincoln County, the judge
9 actually said, if you want the right of survey, make it
10 as a part of your condemnation. So I don't think we're
11 doing anything that's outside of the norm to facilitate
12 the final closure of the gaps.

13 We're at 88.14 percent closed on lands today. So
14 88.14 percent of the route in South Dakota people are
15 okay with. So what that means is you have these gaps.
16 At the end of the day, the pipeline has to connect.

17 Now we don't like to condemn. We think it's a
18 horrible thing. I would not want to be personally
19 condemned. But at some point when communications fail,
20 when good-faith negotiations fail, there are laws that
21 provide for the conclusion of those negotiations.

22 I didn't make the laws. We just have to follow the
23 laws for which we're all governed by. You and me.

24 Q. So part of your decision-making -- excuse me. Part
25 of your decision-making here was that you chose to sue my

1 clients, again, roughly about a week ago, and your
2 objective there is to obtain acquisition rights to the
3 easement area before you ever get a Permit from this
4 Commission. Fair statement?

5 A. Well, I'm not going to try to pretend to be too much
6 of a lawyer here, but what I understand in South Dakota
7 is they're exclusive from each other, the siting under
8 the PUC versus condemnation law under different statutes.

9 So they can be parallel passed. Unfortunately,
10 we've run into an impasse with certain landowners. So
11 for us to conclude our acquisition in preparation of our
12 hopeful approval by the PUC, we have to move forward with
13 those, and we can't wait to the very last day to get that
14 done.

15 Q. Because you're on a tight timeline; correct?

16 A. We are on a schedule.

17 Q. So you're suing my clients to get acquisition of
18 this easement area. Suppose you don't get permission
19 from this Commission.

20 A. And --

21 Q. You've now sued some clients, some people, some
22 landowners and gotten acquisition for these areas. What
23 are you going to do now?

24 A. Well, we'd have to talk to our lawyers, number one.
25 But if we were not able to fulfill the construction

1 because we didn't get our Permit, then those easements
2 would probably terminate, is my guess. I'd have to talk
3 to my attorneys.

4 Q. But as you testify here today, you think you've
5 fulfilled that element of fairness in suing landowners
6 before this Commission ever gives you any sort of
7 blessing on your project?

8 A. I do.

9 Q. You do?

10 A. I do. Yes, I do.

11 Q. Are you knowledgeable at all about the tiling
12 systems that are under the various parcels of land that
13 you want to put the pipeline in?

14 A. On an individual landowner basis, no. In general
15 concepts and what tiling does and how it works, I am.

16 Q. Do you have any knowledge as far as where the
17 particular tiling systems are as it relates to my
18 clients' property -- properties in Minnehaha and Lincoln
19 Counties?

20 A. Me personally, no. But we do have surveyors, and if
21 those individuals will let us -- well, one, if they'll
22 communicate with us, and, two, if they'll let us survey
23 to try to identify those so we can figure out where
24 they're at to manage those constraints or
25 constructability considerations, that we would then come

1 up with a plan to cross those, which our Ag Mitigation
2 Plan contemplates.

3 But I don't know specifically on an individual
4 landowner basis.

5 Q. What if there's no record of where these tiling
6 systems are? For instance, some of the older clay or
7 cement tiles?

8 A. Yeah. That happens.

9 Q. So even your experts aren't going to know where the
10 tiles are; correct?

11 A. That's correct.

12 Q. And so what assurance, what promises can you make
13 these landowners that you're not going to adversely
14 affect these tiling systems for years to come?

15 A. Well, our commitment is to restore any impacted
16 tiling systems or drain tile systems back to their
17 original function. And in a lot of circumstances when
18 they're the old clay style systems, that most of them may
19 or may not work -- you know, just who knows, that if we
20 do cross those during construction, we will repair those.
21 And there are techniques that you can repair those. And
22 in most cases it's going to be to a better form or
23 function than what they are today.

24 Q. If they're not repaired to their pre-pipeline state,
25 your commitment from Dakota Access is that you're going

1 to give those landowners more compensation? Yes or no?

2 A. No.

3 Q. Why not?

4 A. We're going to repair the drain tile.

5 Q. No. My question is, let's say you don't repair that
6 drain tile to its pre-pipeline state. Are you going to
7 pay those landowners more money then?

8 A. It depends on what the impact is. I can't answer
9 that.

10 Q. Well, let's assume it's a negative impact. It
11 definitely won't be a positive one. It's a negative
12 impact.

13 Are you going to pay the landowners more money then?

14 A. I can't answer because I don't know what the impact
15 is. You're asking me to assume.

16 Q. Well, I'm not. I'm telling you it's a negative
17 impact. So in the event there is that long lasting
18 negative impact, are you going to pay the landowners more
19 money then?

20 MR. KOENECKE: Objection. Asked and answered.

21 MS. WIEST: Overruled.

22 A. What's the negative impact? Maybe that's what I
23 don't understand what you're asking.

24 Q. Well, the tiling system doesn't work anymore.

25 That's a negative impact. Are you going to pay the

1 landowner more money then?

2 A. No.

3 Q. Why would you not do that then?

4 A. We will repair the drain tile system to its
5 function.

6 Q. And let's say you can't repair it to its function.
7 It's left with a longstanding negative impact. You will
8 not be reimbursing the landowner anymore?

9 A. And I am saying that is a null action. It's not
10 realistic. If we impact a drain tile system, our
11 commitment, and we've said this a million times, is that
12 we will repair that drain tile or replace its function.

13 Q. Who will be the Dakota Access witnesses in terms of
14 the impacts on tiling systems and also land being
15 restored to its pre-pipeline state?

16 A. Most likely Jack Edwards from our construction and
17 Monica Howard from our restoration. And Chuck Frey from
18 a design standpoint.

19 Q. Are they going to profess to be more knowledgeable
20 about the tiling, the productivity, the restoration of
21 topsoil than you are?

22 MR. KOENECKE: Objection. He's asking the
23 witness to project what somebody else might say.

24 MS. WIEST: Sustained.

25 Q. Are they the people to talk to in terms of more

1 specifics on these topics as opposed to you?

2 A. Probably not. We do have a technical expert that
3 we've hired to address, you know, individual landowner
4 concerns who's a certified agronomist. And we've hired a
5 couple of companies to help us with that, that your
6 clients have -- if they haven't taken advantage of those
7 consultations, they can at any time. We've made them
8 available to all landowners.

9 Q. I'm talking about witnesses at this hearing.

10 A. On rebuttal we do plan to have one of those here if
11 need be.

12 Q. Who's that person?

13 A. Aaron. I'd have to look up his last name. I'm
14 sorry. It just slipped my mind.

15 Q. First name is Aaron?

16 A. Aaron.

17 MR. BOOMSMA: Okay. That's all I have for
18 questions.

19 MS. WIEST: Ms. Best, do you have many
20 questions?

21 MS. BEST: Just a couple.

22 CROSS-EXAMINATION

23 BY MS. BEST:

24 Q. You indicated that you were in negotiations with a
25 contractor. Are you at a point with those

1 negotiations that you can identify publicly who that
2 contractor is?

3 A. Yes, ma'am. We have released that in a press
4 statement or public announcement in Iowa. It's Michels
5 Corporation.

6 Q. And what can you tell the Commission about Michels
7 Corporation in terms of their experience and background?

8 A. Michels Corporation is one of the largest pipeline
9 contractors in North America. They're located out of
10 Brownsville, Wisconsin. They are one of the absolute
11 premier contractors in this country for pipelines.
12 They've been around for, I don't know, 40 years or so.
13 They've done a lot of work for our company.

14 They've built the majority of Keystone -- or the
15 TransCanada Pipeline that's in the ground today. They
16 have extensive experience in the Dakotas as well as in
17 other parts of the Midwest, or mid-central part of the
18 United States, in agricultural areas. They're actually
19 one of the premier contractors for that. That's one
20 reason we hired them, or are in the process of hiring
21 them.

22 They have a lot of their own equipment. It's all
23 state of the art equipment. They have some of the best
24 superintendents out there. They're a union outfit so
25 they're all very highly trained from welding through

1 trucking through handling of the pipe. That's one of the
2 benefits of a union contractor is they're very
3 specialized and the most trained individuals in the
4 pipeline business.

5 For all those reasons they're, in my mind, one of
6 the top two contractors in the U.S. to build these type
7 of pipes. And we're hiring the two that I would consider
8 to be the best, but in South Dakota it is Michels
9 Corporation.

10 Q. As part of your contract with this contractor, you
11 would require them to have liability insurance; is that
12 correct?

13 A. Yes, ma'am.

14 Q. As we sit here today, do you know what those limits
15 are?

16 A. I do.

17 Q. And what are they?

18 A. Well, I don't usually like to talk about
19 proprietary information. It's really business
20 confidential.

21 THE WITNESS: Brett.

22 MR. KOENECKE: Could we do it under Protective
23 Order?

24 MS. WIEST: Yes. Yes. To the extent you think
25 it's confidential.

1 MR. KOENECKE: I do think it's a business secret
2 and proprietary information.

3 MS. WIEST: But is your request to do it
4 confidentially right now?

5 MR. KOENECKE: Yes.

6 MS. BEST: What I would ask is that the
7 insurance limits -- the general liability, professional
8 liability, automotive liability, and any other liability
9 policy, that the per occurrence in aggregate limits be
10 provided to the Commission, to the PUC under seal.

11 If you don't want to give those to the parties,
12 that's one thing, but the PUC needs to have that
13 information to make its decision.

14 THE WITNESS: Not a problem.

15 MR. KOENECKE: I don't think we mind the parties
16 having it. That's subject to Protective Order. But the
17 general public, I don't think we want it discoverable by
18 anybody out there on the Internet.

19 MS. WIEST: Certainly.

20 So you guys can provide that, and then it will
21 just be filed as confidential and subject to the
22 Protective Order; is that correct?

23 MR. KOENECKE: We'll do that. When would you
24 like that to be done by?

25 MS. WIEST: I don't know if there's a -- did you

1 need it right away, Ms. Best?

2 MS. BEST: Sometime during this proceeding.

3 MR. KOENECKE: Thank you.

4 MS. BEST: I have no further questions.

5 MS. WIEST: Did you have any questions,
6 Ms. Northrup?

7 MS. NORTHRUP: Just a few. Thank you.

8 CROSS-EXAMINATION

9 BY MS. NORTHRUP:

10 Q. Mr. Mahmoud, good evening. My name is Margo
11 Northrup. I'm an attorney here in Pierre. I just have a
12 few questions.

13 A. Sure.

14 Q. Do you understand generally that there are seven
15 rural water systems that are impacted by the proposed
16 crossings?

17 A. Yes, ma'am.

18 Q. And have you been directly involved with those rural
19 water systems as it relates to the safety considerations
20 of the cross of the waterlines?

21 A. I've been the approver of the agreements. Jack,
22 under my direction, has been the person to negotiate
23 those details.

24 Q. And do you -- in your opinion, do you believe that
25 Mr. Edwards is in a better situation to testify to the

1 safety considerations of crossing waterlines?

2 A. I do. He or Chuck Frey.

3 Q. And you understand that they're going to testify as
4 part of this proceeding?

5 A. Yes, ma'am.

6 MS. NORTHRUP: Thank you, sir.

7 THE WITNESS: Thank you.

8 MS. NORTHRUP: I have no further questions.

9 MS. WIEST: Ms. Edwards, do you have many
10 questions?

11 MS. EDWARDS: I would estimate about 10 minutes.

12 MS. WIEST: I think we will adjourn for the
13 evening.

14 One question for Dakota Access. Do you know the
15 order of any witnesses that will go on in the next few
16 days, Mr. Koenecke?

17 MR. KOENECKE: I do, Ms. Wiest.

18 It's our intention to call Chuck Frey next.
19 Jack Edwards after him. And Monica Howard, followed by
20 Todd Stamm, as listed on our sheet. We intend to call
21 our witnesses in that order.

22 MS. WIEST: Thank you.

23 Any other questions before we adjourn for the
24 evening?

25 If not, I believe the Order states that we will

1 begin again at 8:00 a.m.

2 (The hearing is in recess at 6 o'clock p.m.)

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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 29th day of
11 September, 2015, 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 October, 2015.

15

16

17

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

21

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23

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