

**BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION)
BY TRANSCANADA KEYSTONE PIPELINE,) **HP 14-001**
LP, FOR RE-CERTIFICATION OF PERMIT)
UNDER THE SOUTH DAKOTA ENERGY)
CONVERSION AND TRANSMISSION)
FACILITIES ACT, TO CONSTRUCT)
THE KEYSTONE XL PROJECT)**

**GARY F. DORR’S FIRST INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS TO TRANS-CANADA**

TO: TRANS-CANADA, APPLICANT FOR RECERTIFICATION

YOU AND EACH OF YOU PLEASE TAKE NOTICE AND BE ADVISED:

That the Intervenor, **Gary F. Dorr**, pursuant to the South Dakota Rules of Civil Procedure, demands answer, under oath, to the following written Interrogatories and Request for Production of Documents within thirty (30) days of the service upon you of said Interrogatories and Request.

These Interrogatories and Request for Production of Documents shall be deemed to be continuing and if information is discovered by or becomes known to you or the Applicant, or to anyone acting on Applicant’s behalf after answering the same, and before the start of the Evidentiary Hearing in the matter, which should

change or add to the answers given, you are hereby directed and requested to furnish said information to the undersigned under oath, giving timely notice thereof.

DEFINITIONS:

(a) “You” or “your” means the Applicant, Applicant’s attorneys, agents, employees, representatives, consultants, advisors, and all other persons acting or purporting to act on behalf of the Applicant with regard to Trans-Canada operations.

(b) As used herein, the term “document” shall mean the original and any electronic or written copy, regardless of origin or location, of any written, typed, printed, recorded or graphic matter of any kind, however, produced including but not limited to any book, pamphlet, periodical, letter, memorandum, e-mail, telegram, report, record, study, written notice, working paper, chart, paper, index, tape, data sheet, data processing card, letters or other correspondence, summaries, tabulations, cost sheets, canceled checks, financial reports and statements, motion picture films, book-keeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, or any other written, recorded, transcribed, punched, audio, video or otherwise digital taped, filmed or graphic material, however produced or reproduced, other data compilations, including computer data, and the memory units containing data, to which you have or had access.

(c) The term “identify” or “identification,” when used with reference to an individual person, shall mean to state his or her full name, present position, business affiliation, if known, address, and prior position or affiliation, if no longer connected with the Applicant or beneficiaries in interest. The terms “identify” or “identification,” when used with reference to a document, shall mean to state the date and author or signor, as the case may be, the addressee, the type of document, its present or last known location or custodian and all means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a motion for its production

pursuant to the SD Rules of Civil Procedure. If any such document was, but is no longer in your possession or subject to your control, state the disposition which was made of it and the reason for such disposition and the date thereof.

If you or your attorney object to answering any of these interrogatories or withhold any document from production under a claim of privilege or other exemption from discovery, state in detail the grounds for the nature of the objection and, for responses to requests for production, the title and nature of the document, a statement of the specific basis on which privilege is claimed.

INTERROGATORIES

1. Please identify the person or persons providing each answer to an Interrogatory or portion thereof, giving the full name, address of present residence, date of birth, business address and occupation.

2. Prior to answering these interrogatories, have you made due and diligent search of all books, records, and papers of the Applicant with the view of eliciting all information available in this action?

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF

DOCUMENTS:

	CONDITIONS OF PERMIT	INTERROGATORIES/REQUESTS
1	Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project.	1. Provide proof that TransCanada has obtained consent from the Rosebud Sioux or Great Sioux Nation to pass through the 1868

	<p>These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 601 01 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01 :32 through 74:02:01 :34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.</p>	<p>boundaries of the Great Sioux Nation in accordance with the un-abrogated treaty stipulation in Article 16 of TREATY WITH THE SIOUX—BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE—AND ARAPAHO, 1868, contained in 15 Stats., 635.</p> <p>2. Provide explanation for how TransCanada is consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribe about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX—BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE—AND ARAPAHO, 1868, otherwise known as 15 Stats., 635.</p>
<p>41</p>	<p>Keystone shall follow all protection and mitigation efforts as identified by the US Fish and Wildlife Service</p>	<p>1. Please provide explanation for why TransCanada is consulting</p>

	<p>("USFWS") and SDGFP. Keystone shall identify all greater prairie chicken and greater sage and sharp-tailed grouse leks within the buffer distances from the construction right of way set forth for the species in the FEIS and Biological Assessment (BA) prepared by DOS and USFWS. In accordance with commitments in the FEIS and BA, Keystone shall avoid or restrict construction activities as specified by USFWS within such buffer zones between March 1 and June 15 and for other species as specified by USFWS and SDGFP.</p>	<p>with South Dakota and the USFWS but not consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribal Government despite the fact that the Rosebud Sioux Tribe has a Game, Fish, and Parks Department and a Land Use Code (Rosebud Sioux Tribe Title 18) about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX—BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE—AND ARAPAHO, 1868, contained in 15 Stats., 635.</p>
<p>43</p>	<p>43. In accordance with Application, Section 6.4, Keystone shall follow the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and provide it to the Commission upon request. Ex TC-1.6.4, pp. 94-96; Ex S-3. If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its</p>	<p>1. Please provide explanation for why TransCanada's unanticipated discoveries plan does not plan to notify the Federally-recognized Rosebud Sioux Tribal Historic Preservation Office (THPO) which also has the right to consultation under Section 106 of the National Historic Preservation Act as the "appropriate" tribe due to the fact</p>

	<p>contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO. If the DOS and SHPO determine that a significant resource is present, Keystone shall develop a plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage avoid or protect the archaeological resource. If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction. Keystone shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities.</p>	<p>that the pipeline passes between several Rosebud Tribal Housing communities, near tribal allotment land, and across established political precincts of the Rosebud Sioux Tribe, and the traditional homelands of those same people in those housing areas, on those allotments, and in those precincts.</p>
<p>36</p>	<p>Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its</p>	<ol style="list-style-type: none"> 1. Identify all emergency medical response planning being provided to the Rosebud Sioux Tribal Government as contained within the emergency response plan. 2. Provide explanation for why the Rosebud Sioux Tribal Government is being excluded from having the emergency management plan filed with them. 3. Identify what affect emergencies will have for every tribal housing community, tribal

	<p>Emergency Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01 :41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01 :41 through 20:10:01 :43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.</p>	<p>allotments, and political precincts that the pipeline passes through or nearby?</p> <p>4. Identify how will rural Tribal housing areas, tribal allotments, and political precincts of the Rosebud Sioux Tribe in and near to the project area be notified of spills or other emergencies?</p>
<p>34</p>	<p>In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas. Prior to Keystone commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan. In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Keystone shall seek out and consider local knowledge, including the knowledge of the</p>	<p>1. Explain why the Rosebud Sioux Tribal Government, which has treaty-reserved and usufructuary rights which have never been abrogated from the Fort Laramie Treaty of 1868, is being excluded from consultation, separate from other applicable federal and state laws, regarding High Consequence Areas?</p>

	South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.	
43	<p>In accordance with Application, Section 6.4, Keystone shall follow the "Unanticipated Discoveries Plan," as reviewed by the State Historical Preservation Office ("SHPO") and approved by the DOS and provide it to the Commission upon request. Ex TC-1.6.4, pp. 94-96; Ex S-3. If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, historical resource or gravesite, Keystone or its contractors or agents shall immediately cease work at that portion of the site and notify the DOS, the affected landowner(s) and the SHPO. If the DOS and SHPO determine that a significant resource is present, Keystone shall develop a plan that is approved by the DOS and commenting/signatory parties to the Programmatic Agreement to salvage avoid or protect the archaeological resource. If such a plan will require a materially different route than that approved by the Commission, Keystone shall obtain Commission and landowner approval for the new route before proceeding with any further construction. Keystone shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Keystone's construction or maintenance activities.</p>	<ol style="list-style-type: none"> 1. Provide proof that a proper cultural resources survey was completed, in accordance with accepted methodologies and procedures, and acceptable to federal guidelines as the pipeline crosses boundaries contained in the 1868 Treaty of Fort Laramie which contains unabrogated treaty-reserved rights of the Rosebud Sioux Tribe among other tribes. 2. Provide information on who was contracted to conduct the cultural resources survey. 3. Provide proof that the Rosebud Sioux Tribe was consulted about the results of the survey. 4. Please provide proof that any maps used for the survey and compiled from the survey contain recognition that the Rosebud Sioux Tribe is the appropriate tribe of consultation. 5. Provide proof that the Rosebud Sioux Tribe which has political precincts, housing areas and

		<p>tribal allotment land in Tripp and Gregory counties, and is the “appropriate tribe” to consult with under the rules of Section 106 of the National Historic Preservation Act, will be meaningfully consulted regarding unanticipated discoveries.</p>
<p>24</p>	<p>The June 29, 2010 order recites Findings of Fact demonstrating the strong demand for the Project. Given the dynamic nature of the crude oil market, there have been changes in the nature of this demand since 2010. As demonstrated below, however market demand for the Project remains strong today. The transport of additional crude oil production from the WCSB continues to be necessary to meet demand by refineries and markets in the U.S. The need for the project is driven by a number of factors, including increasing domestic U.S. and Canadian, crude oil production combined with insufficient pipeline capacity; an energy efficient and safe method to transport this growing production; the opportunity to reduce U.S dependence on foreign offshore crude oil through increased access to North American supplies; and binding shipper commitments to utilize the Keystone Pipeline System.</p>	<ol style="list-style-type: none"> 1. Provide current documentation that the Keystone XL is necessary to meet demand by refineries and markets in the U.S. 2. Provide information by percentage how much U.S. domestic oil production has increased since 2010. 3. When Keystone says market demand for the Project is strong, which market is being referred to? 4. How much of the oil produced from the Keystone-pumped oil will be put into the United States’ domestic oil supply market and not the open market?

Dated this 6th day of January, 2015.

Respectfully submitted

Gary F. Dorr
27853 292d St
Winner, SD 57580
605-828-8391
Intervenor in PUC docket HP14-001

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the above Interrogatories and Request for Production of Documents was e-mailed to:

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