

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE PETITION OF	:	
TRANSCANADA KEYSTONE PIPELINE,	:	DOCKET NUMBER HP 14-001
LP FOR ORDER ACCEPTING	:	
CERTIFICATION OF PERMIT ISSUED IN	:	
DOCKET HP09-001 TO CONSTRUCT	:	REBUTTAL TESTIMONY
THE KEYSTONE XL PROJECT	:	OF JON SCHMIDT
	:	
	:	

0-0

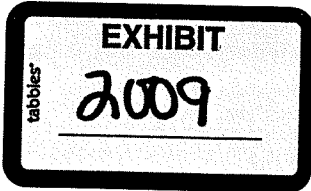
Pursuant to the Commission's Order Granting Motion to Define Issues and Setting Procedural Schedule, Petitioner TransCanada Keystone Pipeline, LP, offers the following rebuttal testimony of Jon Schmidt.

1. State your name and occupation.

Answer: My name is Jon Schmidt. I am employed as Vice President, Environmental and Regulatory Services, Energy Services, by exp Energy Services, a consultant for the Keystone XL Project.

2. Did you provide direct testimony in this proceeding?

Answer: Yes.



3. To whose testimony are you responding in rebuttal?

Answer: I am responding to the direct testimony of Doug Crow Ghost and Carlyle Ducheneaux.

4. On pages 2-4 of his testimony, Crow Ghost discusses the Winters Doctrine.

Will construction of the Keystone Pipeline affect the water rights of the Tribe under this doctrine?

Answer: Keystone has not applied yet for temporary water use permits. Current South Dakota administrative code (ARSD 46:5:40:1) indicates that “no temporary permit may be issued if the permit interferes with or adversely affects prior appropriations or vested rights.” Thus, there are administrative protections for the Tribe’s claimed water rights. The proposed temporary water uses will not interfere with long-standing water rights in any of the rivers proposed for withdrawal.

5. On page 5 of his testimony, Crow Ghost states that the Little Missouri River, the Cheyenne River, the North Fork of the Morean River, the Bad River, and the White River have been potentially impacted by long-term drought. If Keystone withdraws water from these river systems, is it possible that downstream water users, including Tribal water users and non-Indian farmers and ranchers, will not have adequate water supplies?

Answer: As discussed above, the permitting process will address that issue.

In addition, Keystone's primary use of water during construction is for hydrostatic testing.

Water used in hydrostatic testing is returned to the water source.

6. On page 6 of his testimony, Crow Ghost discusses the effect of construction on water quality. Will construction of the Keystone Pipeline affect water quality, specifically referencing the North Fork of the Grand River and the Little Missouri River?

Answer: The Project will not cross the North Fork of the Grand River, and therefore will not release any sediment contamination in the river through handling or construction. The Project will also cross the Little Missouri River using the HDD construction method, thereby avoiding any impacts to the river sediments, and thereby avoiding release of potential contaminants in the river.

7. If drought conditions exist during the period of time when Keystone requires water for dust control or hydrostatic testing, how will Keystone obtain adequate water supplies?

Answer: If drought conditions were to exist such that insufficient unappropriated water was available in quantities required by Keystone, Keystone would seek alternate sources of water, which could include use of existing water wells, drilling new water wells, reuse of water from upstream tested sections as appropriate, or use of municipal supply. Additionally, Keystone could use alternate dust abatement methods

{01914821.1}

such as magnesium chloride to reduce the amount of water needed. Lastly, if no alternate solutions were feasible Keystone would delay its testing program.

8. In question 8 of his testimony, Carlyle Ducheneaux states that the soils in and around the Cheyenne River and its tributaries are contaminated by previous polluters. Will construction of the Keystone XL Pipeline disrupt these contaminated sediments?

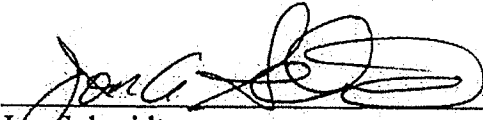
Answer: The Cheyenne River will be crossed using HDD construction techniques, which do not result in the disturbance or release of potential contaminants from existing river bed sediments or cause significant disturbance of soils in the area of the river.

9. In questions 12 and 13 of his direct testimony, Ducheneaux addresses the likelihood of pipeline failure due to sloughing of river banks and the fact that the banks of the Cheyenne River are highly susceptible to collapse. Will the construction of the Keystone XL Pipeline cause sloughing, erosion, or collapse of these river banks?

Answer: The Cheyenne River will be crossed using HDD construction techniques. There will be no impact to the river banks and bluffs that could lead to sloughing of the banks into the river. With respect to tributaries that are crossed using the open cut construction technique, Keystone will mitigate bank and bluff sloughing by

various stabilization means such as installation of rip-rap, geotextile material or re-sloping of the banks, all of which are addressed in the CMR Plan.

Dated this 4 day of June, 2015.



Jon Schmidt

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the foregoing Rebuttal

Testimony of Jon Schmidt, to the following:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
patty.vangerpen@state.sd.us

Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
kristen.edwards@state.sd.us

Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
brian.rounds@state.sd.us

Darren Kearney
Staff Analyst South Dakota Public Utilities
Commission
500 E. Capitol Avenue
Pierre, SD 57501
darren.kearney@state.sd.us

Tony Rogers, Director
Rosebud Sioux Tribe - Tribal Utility
Commission
153 South Main Street
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Cindy Myers, R.N.
PO Box 104
Stuart, NE 68780
csmyers77@hotmail.com

Jane Kleeb
1010 North Denver Avenue
Hastings, NE 68901
jane@boldnebraska.org

Byron T. Steskal
Diana L. Steskal
707 E. 2nd Street
Stuart, NE 68780
prairierose@nntc.net

Terry Frisch
Cheryl Frisch
47591 875th Road
Atkinson, NE 68713
tcfrisch@q.com

Arthur R. Tanderup
52343 857th Road
Neligh, NE 68756
atanderu@gmail.com

Lewis GrassRope
PO Box 61
Lower Brule, SD 57548
wisestar8@msn.com

Robert G. Allpress
46165 Badger Road
Naper, NE 68755
bobandnan2008@hotmail.com

Amy Schaffer
PO Box 114
Louisville, NE 68037
amyannschaffer@gmail.com

Benjamin D. Gotschall
6505 W. Davey Road
Raymond, NE 68428
ben@boldnebraska.org

Elizabeth Lone Eagle
PO Box 160
Howes, SD 57748
bethcbest@gmail.com

John H. Harter
28125 307th Avenue
Winner, SD 57580
johnharter11@yahoo.com

Peter Capossela
Peter Capossela, P.C.
Representing Standing Rock Sioux Tribe
PO Box 10643
Eugene, OR 97440
pcapossela@nu-world.com

Travis Clark
Fredericks Peebles & Morgan LLP
Suite 104, 910 5th St.
Rapid City, SD 57701
tclark@ndnlaw.com

Carolyn P. Smith
305 N. 3rd Street
Plainview, NE 68769
peachie_1234@yahoo.com

Louis T. (Tom) Genung
902 E. 7th Street
Hastings, NE 68901
tg64152@windstream.net

Nancy Hilding
6300 West Elm
Black Hawk, SD 57718
nhilshat@rapidnet.com

Paul F. Seamans
27893 249th Street
Draper, SD 57531
jackknife@goldenwest.net

Viola Waln
PO Box 937
Rosebud, SD 57570
walnranh@goldenwest.net

Wrexie Lainson Bardaglio
9748 Arden Road
Trumansburg, NY 14886
wrexie.bardaglio@gmail.com

Harold C. Frazier
Chairman, Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625
haroldcfrazier@yahoo.com
mailto:kevinckeckler@yahoo.com

Jerry P. Jones
22584 US Hwy 14
Midland, SD 57552

Debbie J. Trapp
24952 US Hwy 14
Midland, SD 57552
mtdt@goldenwest.net

Jennifer S. Baker
Representing Yankton Sioux Tribe
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
jbaker@ndnlaw.com

Duncan Meisel
350.org
20 Jay St., #1010
Brooklyn, NY 11201
duncan@350.org

Bruce Ellison
Attorney for Dakota Rural Action
518 6th Street #6
Rapid City, SD 57701
belli4law@aol.com

RoxAnn Boettcher
Boettcher Organics
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Bonny Kilmurry
47798 888 Road
Atkinson, NE 68713
bjkilmurry@gmail.com

Cody Jones
21648 US Hwy 14/63
Midland, SD 57552

Gena M. Parkhurst
2825 Minnewsta Place
Rapid City, SD 57702
GMP66@hotmail.com

Joye Braun
PO Box 484
Eagle Butte, SD 57625
jimbraun57625@gmail.com

The Yankton Sioux Tribe
Robert Flying Hawk, Chairman
PO Box 1153
Wagner, SD 57380
robertflyinghawk@gmail.com
Thomasina Real Bird
Attorney for Yankton Sioux Tribe
trealbird@ndnlaw.com

Chastity Jewett
1321 Woodridge Drive
Rapid City, SD 57701
chasjewett@gmail.com

Bruce Boettcher
Boettcher Organics
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Ronald Fees
17401 Fox Ridge Road
Opal, SD 57758

Robert P. Gough, Secretary
Intertribal Council on Utility Policy
PO Box 25
Rosebud, SD 57570
bobgough@intertribalCOUP.org

Dallas Goldtooth
38731 Res Hwy 1
Morton, MN 56270
goldtoothdallas@gmail.com

Cyril Scott, President
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 57570
cscott@gwtc.net
ejantoine@hotmail.com

Thomasina Real Bird
Representing Yankton Sioux Tribe
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
trealbird@ndnlaw.com

Frank James
Dakota Rural Action
PO Box 549
Brookings, SD 57006
fejames@dakotarural.org

Tracey A. Zephier
Attorney for Cheyenne River Sioux Tribe
Fredericks Peebles & Morgan LLP
910 5th Street, Suite 104
Rapid City, SD 57701
tzephier@ndnlaw.com

Tom BK Goldtooth
Indigenous Environmental Network (IEN)
PO Box 485
Bemidji, MN 56619
ien@igc.org

Gary F. Dorr
27853 292nd
Winner, SD 57580
gfdorr@gmail.com

Paula Antoine
Sicangu Oyate Land Office Coordinator
Rosebud Sioux Tribe
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net
paula.antoine@rosebudsiouxtribe-nsn.gov

Sabrina King
Dakota Rural Action
518 Sixth Street, #6
Rapid City, SD 57701
sabinra@dakotarural.org

Robin S. Martinez
Dakota Rural Action
Martinez Madrigal & Machicao, LLC
616 West 26th Street
Kansas City, MO 64108
robin.martinez@martinezlaw.net

Paul C. Blackburn
4145 20th Avenue South
Minneapolis, MN 55407
paul@paulblackburn.net

Matthew Rappold
Rappold Law Office
on behalf of Rosebud Sioux Tribe
PO Box 873
Rapid City, SD 57709
matt.rappold01@gmail.com

Kimberly E. Craven
3560 Catalpa Way
Boulder, CO 80304
kimecraven@gmail.com

Mary Turgeon Wynne
Rosebud Sioux Tribe - Tribal Utility
Commission
153 S. Main Street
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

April D. McCart
Representing Dakota Rural Action
Certified Paralegal
Martinez Madrigal & Machicao, LLC
616 W. 26th Street
Kansas City, MO 64108
april.mccart@martinezlawn.net

Joy Lashley
Administrative Assistant
SD Public Utilities Commission
joy.lashley@state.sd.us

Eric Antoine
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 57570
ejantoine@hotmail.com

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore
William Taylor
James E. Moore
PO Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
Phone (605) 336-3890
Fax (605) 339-3357
Email James.Moore@woodsfuller.com
Attorneys for Applicant TransCanada