



## **Response to the Motion to Compel**

Mr. Dorr's motion begins with a narrative explaining what research he has done to amplify the discovery responses. His detailed complaint with discovery responses begins in the second full paragraph on the second page of his motion, but does not state with precision the interrogatories involved. Keystone will respond commencing at that point. Mr. Dorr didn't number the early paragraphs in his motion, so Keystone's response identifies the issues addressed by paragraph and page.

1. **Second paragraph beginning page 2:** Mr. Dorr challenges Keystone's belief that the right-of-way does not pass through Indian Country or over tribal lands, and that no usufructuary rights are violated. Mr. Dorr doesn't complain that the answer is insufficient. Rather, he makes a legal argument contending that tribal usufructuary rights exist. Keystone does not believe that a motion to compel is the correct forum to resolve the legal issue Mr. Dorr argues in his motion. Accordingly, Keystone stands on its answer.
2. **Second paragraph beginning middle of page 3:** Mr. Dorr contends that Keystone failed to respond to what appears to be Interrogatory 2, Dorr First Interrogatories. That interrogatory inquires whether Keystone obtained the consent of the Rosebud Sioux to cross certain lands described in Article 16 of the 1868 Treaty of Ft. Laramie. Keystone responded in part by saying it does not believe it is required to obtain consent from the Rosebud Sioux Tribe to construct the pipeline on the currently permitted route. To clarify the answer, Keystone has not obtained the permission of the Tribe to pass through the territory described in Article 16 of the Treaty, because it believes it is not legally required to do so.
3. **First paragraph on page 4:** Mr. Dorr contends Keystone did not sufficiently answer what appears to be Interrogatory 36 (a), Dorr First Interrogatories, inquiring about emergency response training. Keystone believes the question was answered in Keystone's responses.
4. **Second paragraph on page 4:** Mr. Dorr contends Keystone did not sufficiently answer Interrogatory 36 (b), Dorr First Interrogatories, inquiring about filing an emergency plan with the Rosebud Sioux Tribe. Keystone answered with a legal standard, which is the law. Mr. Dorr rephrases the question in his motion, which is inappropriate for a motion to compel. Keystone stands on its answer, and observes that when the Emergency Response Plan is finalized, the Rosebud Sioux may indeed be asked to participate as an emergency responder.

5. **Third paragraph on page 4:** Mr. Dorr contends Keystone didn't answer Interrogatory 36(d), Dorr First Interrogatories, regarding notice to rural communities in the event of an emergency. Keystone answered the question and stands on the answer. Mr. Dorr rephrases and expands the question in his motion, which is inappropriate for a motion to compel. None the less, Keystone responds to the new question that the Emergency Response Plan will take into account means to notify small communities and rural areas where law enforcement or other first responder services are sparse.
6. **First full paragraph on page 5:** Mr. Dorr challenges Keystone's answer to Interrogatory 43c, Dorr First Interrogatories, seeking proof that the Rosebud Sioux Tribe was consulted about the results of the cultural resource work performed. Keystone fully answered the question with references to the information sought and stands on its answer.
7. **Second paragraph on page 5:** Mr. Dorr challenges Keystone's answer to Interrogatory 43 (d), by expanding the question and arguing. Keystone fully answered the question with references to the SFEIS. The determination of the "appropriate Tribe for consultation" is made by the Department of State in consultation with the South Dakota State Historical Preservation Officer and is not Keystone's decision. Accordingly, the answer is correct and complete.
8. **Last paragraph on page 5, first two paragraphs on page 6:** Mr. Dorr asserts he did not receive documents responsive to his inquiry. Keystone believes it forwarded the documents mentioned to Mr. Dorr. On Friday April 10, the day after Keystone discovered the motion was filed, Keystone sent an internet link to the documents by email to Mr. Dorr. Had Mr. Dorr asked at any earlier time, Keystone would have re-sent the documents or the internet link.
9. **Second full paragraph on page 6, through the top of page 7:** Mr. Dorr's motion contains a narrative on his views of the legal effect of certain easements held by the United States pertaining to the Mni Wiconi pipeline, which he sometimes refers to as the Oglala Sioux Rural Water Supply System (OSRWSS). Mr. Dorr's original question is argumentative and an inaccurate statement of the law, to which Keystone objected and then answered. In his motion Mr. Dorr does not so much make an objection as argue that his interpretation of the easement is correct, and then rephrases and expands his question. Mr. Dorr's contentions are legal arguments, not challenges to the sufficiency of the interrogatory answer. Keystone stands on the sufficiency of its answer. Keystone's answer was made under oath, the "proof" Mr. Dorr seeks.

Although it is not entirely relevant to the issue Mr. Dorr argues, the Bureau of Reclamation is designated by the United States to manage the easements. By Congressional act the Mni Wiconi core pipelines and the easements are held in trust for certain Tribes. By designation of the Department of Interior, The Bureau of Reclamation administers federal trust responsibility for the easements and core facilities.

The federal core line easements were acquired from ranchers who own the underlying land. The easements are not exclusive, as shown by exhibits 1 and 2 to the

accompanying affidavit of counsel. The owners of the land hosting the Mni Wiconi easements may lawfully grant additional easements on the same property for other uses, subject to the conditions of the senior easement.

Keystone takes the position, as does the Bureau of Reclamation, that the KXL pipeline can be pass through the Mni Wiconi easements so long as Keystone has the landowner's permission and the installation does not interfere with the Mni Wiconi easement. As demonstrated by interrogatory answers, the Bureau of Reclamation has developed engineering conditions for the crossing. If Keystone meets the conditions, the Bureau of Reclamation will authorize construction of the KXL pipeline within the easements.

Keystone does not believe the permission of the Tribes or the management of the Oglala Sioux Rural Water Supply System is required to construct the KXL pipeline within the Mni Wiconi easements.

This is a legal question, not a discovery issue.

10. **Second paragraph page 8 numbered 5:** Mr. Dorr is referring to Interrogatory 5, Dorr Second Interrogatories, asking for copies of Keystone easements on land encumbered by Mni Wiconi easements. Mr. Dorr correctly observed one of the easements supplied by Keystone was incorrect. The easement supplied covered land across old Highway 16 from the Mni Wiconi pipeline right-of-way. Keystone supplied the correct easement on April 10.

Keystone answered the interrogatory as to the core lines, which consist of a pipeline crossed in Jones County and a pipeline in Haakon County. Keystone did not answer as to distribution lines, as the question didn't ask for easements involving distribution lines, which typically are with the individual rural water systems supplying retail service.

11. **Third paragraph page 8 numbered 6:** Mr. Dorr is referring to Interrogatory 6, Dorr Second Interrogatories, pertaining to the criteria the Bureau of Reclamation developed relative to the KXL line crossing the Mni Wiconi. Mr. Dorr is incorrect in his assertion that the Montana office of the Bureau of Reclamation approved the crossing criteria. The criteria was approved by the Bismarck office of the Bureau of Reclamation. The Bismarck office has jurisdiction over South Dakota.
12. **Fourth paragraph page 8, numbered 7:** Mr. Dorr doesn't object to the interrogatory answer provided. Rather, he makes a legal argument regarding who holds ownership of the Mni Wiconi easements. The easement in question is in fact held by the United States of America. The Department of the Interior, Bureau of Reclamation has been administratively delegated the management of the easement, as demonstrated by the language of the easement.
13. **Second paragraph page 9, numbered 8:** Keystone will attempt to provide a larger scale rendition of the map in question.

14. **Fourth paragraph page 9, numbered 9:** Keystone will attempt to provide a larger scale rendition of the map in question.
15. **Sixth paragraph page 9, numbered 10:** Keystone will attempt to provide a larger scale rendition of the map in question.
16. **First paragraph page 10, numbered 10:** Keystone's response contained an incorrect easement as noted above. The correct easement was forwarded April 10 by email.

Mr. Dorr concludes with a request that Keystone be precluded from offering certain testimony at the hearing, presumably because of his contention that discovery responses were incomplete. Keystone stands on its responses as noted above, and respectfully requests the Commission deny Mr. Dorr's motion to compel in all respects.

Dated this 13<sup>th</sup> day of April, 2015.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Gary Dorr's Motion to Compel, to the following:

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