

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF
TRANSCANADA KEYSTONE PIPELINE, LP FOR A HP07-001
PERMIT UNDER THE SOUTH DAKOTA ENERGY
CONVERSION AND TRANSMISSION FACILITY ACT
TO CONSTRUCT THE KEYSTONE PIPELINE PROJECT

Transcript of Proceedings
December 11, 2007
Volume VII, Pages 1,496-1,732

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

COMMISSION STAFF
John J. Smith, Commission Counsel
Kara Semmler, Staff Attorney
Karen Cremer, Staff Attorney

APPEARANCES
Brett M. Koenecke and David A. Gerdes,
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P.O. Box 160,
Pierre, South Dakota 57501,
appearing on behalf of the Applicant;

James P. White,
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Washington, D.C. 20005,
appearing on behalf of the Applicant;

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TransCanada,
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appearing on behalf of the Applicant;

Reported By Cheri McComsey Wittler, RPR, CRR

1	APPEARANCES (Continued)
2	Reed A. Rasmussen and Rodrick L. Tobin, Siegel, Barnett & Schutz,
3	P.O. Box 490, Aberdeen, South Dakota 57402,
4	appearing on behalf of WEB Water;
5	Curt Hohn, appearing pro se;
6	Roxanne Giedd, Diane Best, and Richard M. Williams, South Dakota Attorney General's Office, 1301 East Highway 14, Pierre, South Dakota 57501;
7	
8	
9	Robert K. Sahr, East River Electric Power Cooperative, P.O. Box 227, Madison, SD 57042, appearing on behalf of East River.
10	
11	
12	=====
13	TRANSCRIPT OF PROCEEDINGS, held in the above-entitled
14	matter, at the South Dakota State Capitol, Room 412, Pierre,
15	South Dakota, on the 11th day of December 2007, commencing at
16	8:30 a.m.
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1	<u>Sieh Exhibits</u>	<u>Received</u>	1	MR. SMITH: Good morning, everyone. It's 8:30 on	
2	1 Map of BDM water	739	2	Tuesday, December 11 and we are reconvening the hearing in	
3	2 John Sieh Direct Testimony	739	3	South Dakota Public Utilities Commission Docket HP07-001. The	
4	<u>Cassels Exhibits</u>		4	case is entitled Application of TransCanada Keystone Pipeline,	
5	1 Gene Cassels Direct Testimony	756	5	LP to Construct an Energy Transmission Facility in the State of	
5	2 Marshall County Resolution	756	6	South Dakota.	
6	<u>Ed Miller Exhibits</u>		7	When we broke last evening the Commission staff was	
7	1 Ed Miller Direct Testimony	832	8	about part of the way through their case. And at this point	
7	2 Miller Surrebuttal Testimony	832	9	then we'll look to staff counsel to call its next witness.	
8	3 PowerPoint presentation	832	10	MS. SEMMLER: Staff will call Mr. Bryan Murdock.	
8	4 CD with NTSB, PHMSA, etc. studies	832	11	(The witness is sworn by the court reporter)	
9	<u>George Piper Exhibits</u>		12	<u>DIRECT EXAMINATION</u>	
10	1 George Piper Direct Testimony	928	13	<u>BY MS. SEMMLER:</u>	
11	2 Photo of James River Stream/Flow	936	14	Q. Mr. Murdock, could you please state your name, business	
11	3 Photo of James River Stream/Flow	936	15	address, and employer for the record.	
12	<u>Tim Hofer Exhibits</u>		16	A. My name is Bryan Murdock. I work for Bay West,	
13	1 Tim Hofer Direct Testimony	890	17	Incorporated. We're at 5 Empire Drive, St. Paul, Minnesota.	
14	<u>Delwin Hofer Exhibits</u>		18	Q. Tell us your educational background, Mr. Murdock.	
15	1 Delwin Hofer Direct Testimony	902	19	A. I have a B.S. in biology with a chemistry minor from	
16	2 Map of personal property	906	20	Mankato State University.	
16	3 Easement - back page of agreement	906	21	Q. And your work experience, Mr. Murdock.	
17	<u>Pam Hofer Exhibits</u>		22	A. Well, I've got 19 years experience. Most of my experience	
18	1 Pam Hofer Direct Testimony	919	23	has come in the field of environmental assessment, remediation.	
19	2 Book of structures w/in mile of PS-21	919	24	I'm currently the commercial and industrial services manager at	
20	<u>Edward Goss Exhibits</u>		25	Bay West.	
21	1 Ed Goss Direct Testimony	945			
21	2 Packet of maps	961			
22	3 Pink handwritten paper, map & drawing	961			
22	4 Letter to land agent (redacted)	--			
23	5 Packet attached to land agent letter	970			
23	6 Four pictures of land	970			
24	<u>Ben Grote Exhibits</u>				
25	1 Ben Grote Direct Testimony	750			

1 Relevant experience includes post pipeline construction
 2 restoration oversight, preparation of permitting documents for
 3 pipelines, preparation of environmental assessment worksheets.
 4 One in particular was a biomass energy plant. So plant to
 5 power. And other large projects. I've also coordinated a
 6 number of large emergency response projects.
 7 Q. And Bay West was employed by the Commission to consult with
 8 staff on this case; is that correct?
 9 A. Yes.
 10 Q. Please tell us in general what you reviewed and analyzed to
 11 prepare your prefiled testimony and to testify here today.
 12 A. My focus was somewhat narrow. I was tasked with looking at
 13 the confidential HCA maps provided by TransCanada and then
 14 trying to gather other data to ensure that those HCAs identified
 15 by TransCanada were inclusive of what appeared to meet the
 16 definition.
 17 Q. And did you consult with any outside agency when preparing
 18 your findings?
 19 A. Yes. I talked with the South Dakota DENR, the South Dakota
 20 Game, Fish & Parks, and also made data requests to the DENR,
 21 TransCanada, and the DOT.
 22 Q. And did you receive responses to those data requests in a
 23 timely fashion?
 24 A. I did for some. South Dakota DENR provided source water
 25 protection areas within a 5-mile route of the pipeline. And

1 both my requests for TransCanada and the DOT for specific shape
 2 file information -- additional information about the HCAs that
 3 was not received, but I do understand that through dialogue on
 4 those requests at least from the DOT that that data is
 5 protected, and they don't release it. They don't like to
 6 release it for Homeland Security reasons.
 7 Q. And as part of your analysis in this matter did you review,
 8 excuse me, the burden of proof as contained in SDCL 49-41B-22?
 9 A. Yes.
 10 Q. You'll see in front of you what's been marked for
 11 identification purposes as Staff Exhibit 2.
 12 Is that your prefiled direct testimony, Mr. Murdock?
 13 A. Yes, it is.
 14 Q. Do you have any additions, deletions, or corrections to
 15 make to that testimony?
 16 A. No.
 17 Q. So if I asked you those same questions today, you would
 18 answer the same?
 19 A. Correct.
 20 Q. You'll also see in front of you what's been marked as Staff
 21 Exhibit 4. Is that the complete report that Bay West compiled
 22 and created in preparing for today?
 23 A. Yes, it is.
 24 MS. SEMMLER: I'll offer Staff Exhibit 2 and 4.
 25 MR. WHITE: No objection.

1 MR. TOBIN: No objection.
 2 MR. SMITH: Staff's 2 and 4 are admitted.
 3 Q. Could you please provide us, Mr. Murdock, with a brief
 4 summary of your prefiled testimony, including that report.
 5 A. Yeah. Again, my focus was Task 3, which really
 6 concentrated on the high consequence areas that were identified
 7 by TransCanada.
 8 My charge was to look at the identified HCAs as defined by
 9 49 CFR Parts 195.450 and 195.6. In the project area -- as a
 10 matter of note, the DOT is the caretaker for the data, the HCA
 11 data, and so for that reason that's why I inquired to get
 12 additional data to help with my task.
 13 You know, the way I went about evaluating it was to gather
 14 the -- you know, the pertinent resources from the South Dakota
 15 DENR which included source water protection areas that would
 16 help define the high consequence areas related to drinking
 17 water.
 18 And I also spoke with the South Dakota Game, Fish & Parks
 19 and basically identified that there was a lot of dialogue going
 20 on there. They were in receipt of TransCanada's reports.
 21 TransCanada had met with them on numerous occasions. And they
 22 were still awaiting additional information with regard to some
 23 of the ongoing surveys.
 24 So for both of those tasks looking at not only the drinking
 25 water HCAs and the ecological HCAs the task was complicated a

1 bit because I couldn't really see the detailed information
 2 related to each HCA. It was really housed by the DOT.
 3 So my work was limited to really evaluating what I got from
 4 the South Dakota DENR, looking at the Draft EIS, and comparing
 5 that to the TransCanada HCA maps.
 6 Brian Walsh at the South Dakota DENR provided source water
 7 protection areas within 5 miles of the pipeline right of way. I
 8 compared those source water protection areas identified by
 9 Mr. Walsh to those identified on the TransCanada maps. With the
 10 exception of just one area, there was one source water
 11 protection area not identified on the TransCanada maps.
 12 Otherwise, the population areas, the drinking water HCAs, and
 13 what appeared to be the -- you know, the correct ecological
 14 sensitive areas were all identified.
 15 I pointed that out in my prefiled testimony and TransCanada
 16 in their rebuttal testimony indicated that they did identify one
 17 additional drinking water HCA and I'm sure that's been added to
 18 their HCA map at this time.
 19 You know, the difficulty is -- and I've said that there
 20 isn't enough data provided from the Department of Transportation
 21 to really do a full analysis of what those ecologically
 22 sensitive areas that were identified on the map were protecting.
 23 That's probably the limiting factor. That's not to say that
 24 they aren't incorrect. Just couldn't confirm it without
 25 additional data.

1 So, you know, in summary, just as indicated in the prefiled
 2 testimony, we couldn't find anything that would suggest that
 3 TransCanada isn't doing the level of effort to meet the code,
 4 identify the HCAs at this point, which is truly just a
 5 preliminary stage. They have additional work to do. And they
 6 have up until the time the pipeline begins operation to identify
 7 these HCAs.

8 So we fully expect that they're on track and have done what
 9 they need to do and will follow up with it based on the work
 10 that they've done so far.

11 MS. SEMMLER: And with that, I'm going to make this
 12 witness available for cross.

13 MR. SMITH: Mr. White.

14 MR. WHITE: At this time Keystone has no questions for
 15 Mr. Murdock.

16 MR. SMITH: Mr. Tobin, do you want to make an
 17 appearance quickly?

18 MR. TOBIN: Sure. This is Rod Tobin with Siegel,
 19 Barnett & Schutz representing WEB Water.

20 MR. SMITH: And you're taking over for Mr. Rasmussen?

21 MR. TOBIN: Correct.

22 MR. SMITH: Thank you, sir. Please proceed.

23 CROSS-EXAMINATION

24 BY MR. TOBIN:

25 Q. Mr. Murdock, explain for me again in your testimony on

1 lines 40 and 41 the shape file data. What exactly would that
 2 have allowed you to determine?

3 A. Well, for the perspective of knowing -- have you seen these
 4 maps?

5 Q. I've seen a lot of maps. I'm not sure I've seen the maps
 6 you're referring to.

7 A. The HCA maps might identify -- you know, they are
 8 confidential. They might identify an ecologically sensitive
 9 area, for example. That doesn't tell you what it's protecting,
 10 what is the ecological sensitive area. So if you were to obtain
 11 the shape file data, it would give you specific references to
 12 what that ecologically sensitive area consists of. Does it, you
 13 know, consist of a critically imperiled species and it's name.
 14 So it's additional details that comes with that.

15 Q. Do you consider that knowledge critical to properly protect
 16 it or remediate it in the event of a spill?

17 A. I do. And that is why that information is provided, and
 18 that's -- it's really TransCanada's charge to follow up, dig
 19 further, and then properly protect those areas.

20 And as part of that I do understand that for a couple of
 21 these sensitive areas they've performed additional surveys over
 22 this last year and are incorporating that information into sort
 23 of the contributory pipeline segments and how they can protect
 24 those areas.

25 Q. Have you had an opportunity to review that additional data

1 yet?

2 A. No.

3 Q. In lines 56 through 60 it discusses the variance in the
 4 number and location of community drinking water and source water
 5 areas, and the conclusion is that TransCanada may not have all
 6 the relevant data needed to identify the drinking water HCAs.

7 Is there a means by which they can obtain that data to
 8 complete that review?

9 A. Yeah. And they have.

10 Q. Okay. So that part has been completed?

11 A. Yep. That's the one source water protection area I spoke
 12 of.

13 Q. Is there a possibility that there are others that may
 14 not -- well, I guess --

15 A. Not at this point that I've identified.

16 Q. So this doesn't necessarily refer to individual residential
 17 uses of water? This is more of sources or community water
 18 systems?

19 A. Yeah. And you're suffering a bit from sort of writing
 20 without detail that you have to do in this particular case.

21 Q. Okay. On lines 75 and 76 of your testimony it discusses
 22 field drain tile systems. Could you explain that a little bit
 23 more to me about why that's of critical importance to know that?

24 A. Yeah. Growing up in a farming community you see a lot of
 25 field drain systems go in. They're at the discretion of the

1 farmer most times. And they route water -- route water in ways
 2 that's not obvious, you know, just to the visual eye at ground
 3 surface.

4 So it's important to identify those, especially if they
 5 were larger drainage systems. I don't believe they exist as
 6 extensively in the area of the pipeline as I'm used to seeing
 7 where I grew up. But they are a conduit in the event of a
 8 release.

9 Q. And how far can some of those tiles extend in your
 10 experience?

11 A. They'll extend across the farm field. They may discharge
 12 to a surface waterway, or they may connect to a drainage ditch.

13 Q. And have those been identified at this point?

14 A. I'd find that highly unlikely. Many of them are only going
 15 to be identified through close collaboration with the farmer and
 16 possibly construction.

17 Q. On lines 85 through 91 you discuss text regarding
 18 downstream transport and that the assumption is that the spill
 19 will be intercepted within 5 miles downstream.

20 Could you discuss with me your professional thoughts on
 21 that conclusion?

22 A. Yeah. I have additional knowledge that I can add to this
 23 as well. You know, my first concern in those lines and at least
 24 in line 85 talk about the topographic changes. I'm not aware if
 25 you've seen the contributory pipeline segments map. But that

1 basically says this portion of the pipeline could contribute to
 2 this HCA area if released.
 3 So my concern in reviewing the initial data is this is kind
 4 of a bird's eye view, that there's really going to need to be
 5 some additional ground truthing to decide, you know, where do
 6 those topographic releases really go and in the event of a
 7 release, have they really identified down gradient transport.
 8 So that's the comment with regard to topographic changes.
 9 It's my understanding although initially in their kind of
 10 initial characterization and planning of downstream transport
 11 they just really looked at a mile initially. You know, what
 12 they're really required to do is to plan to the extent an HCA
 13 could be impacted. So if there's a chance that HCA could be
 14 impacted, they might be planning at quite great distances
 15 downstream if, in fact, stream flows, complications with getting
 16 to that location, they're going to have to plan for a downstream
 17 fate and transport of that chemical.
 18 **Q.** Lines 94 through 96 discuss significant rainstorm events
 19 and the effect on downstream transport. Could you explain that
 20 a little bit for me, please.
 21 **A.** Yeah. It's similar to what I just indicated, that they'll
 22 have to take into those worst case conditions. So when they're
 23 looking at a release they'll take into account the size of the
 24 release. In worst case. They'll look at the stream flows.
 25 They'll look at possible complications with regard to weather

1 and then try to come up with, you know, how quickly in worst
 2 case could we respond to a catastrophic or some very complicated
 3 release.
 4 **Q.** And what would be in your opinion a worst-case scenario
 5 with a significant spill with say a significant rain event?
 6 **A.** Well, if you look at the contributory pipeline segments and
 7 you look at the work that the folks at EN Engineering will do,
 8 they'll have identified that if a release occurs in this
 9 particular area what's the volume that could be released.
 10 I would suggest that that's probably going to be the volume
 11 of that worst-case release. That's the purpose of that work.
 12 **Q.** Do you have knowledge of what that may be?
 13 **A.** It's not something I'm familiar with. I heard testimony
 14 today, but I'm not familiar with the volume. And it really
 15 depends on what section of the pipeline you're talking about.
 16 So in any type of a release you have to plan for complications
 17 and difficulty. And that's what sort of the HCA definitions are
 18 there for is here's our -- some of our most valuable protected
 19 resources, and let's plan to protect them.
 20 **Q.** Is there a way to protect all of the resources?
 21 **A.** I don't think that's really -- that's a pretty relative
 22 question. I don't think there's a way in business in any
 23 operation to protect all of the resources.
 24 **Q.** Lines 104 through 106 you discuss response success. Could
 25 you explain that, your conclusions there a little bit for me,

1 please.
 2 **A.** Yeah. I think it's -- the work that TransCanada has to do
 3 to protect these resources in advance is critical. But then as
 4 part of their emergency response planning, sort of their
 5 community collaboration and their drilling to really make a good
 6 response happen is purposeful. I mean, it has to be done in
 7 order to -- you can do all the work up front and identify it,
 8 but if you can't respond to it, your success won't be as great.
 9 So it's important that that preparedness includes some real
 10 drilling and preplanning.
 11 **Q.** Does the CFR or local rules, regulations, statutes, specify
 12 or dictate a specific response plan?
 13 **A.** I'm sure it does. It's not something that's part of my
 14 review.
 15 **Q.** Okay. So you haven't had an opportunity to review any kind
 16 of a response plan that TransCanada may have put together?
 17 **A.** Not in detail. I do know that it's preliminary at this
 18 point.
 19 **Q.** And do you have any conclusions regarding the preliminary
 20 plan that you've seen so far?
 21 **A.** It's appropriate according to code for them to have it in
 22 draft or preliminary form at this time.
 23 MR. TOBIN: Thank you. No further questions at this
 24 time.
 25 MR. SMITH: Thank you, Mr. Tobin. Mr. Hohn, questions

1 of the witness?
 2 MR. HOHN: Yes.
 3 CROSS-EXAMINATION
 4 BY MR. HOHN:
 5 **Q.** Good morning.
 6 **A.** Good morning.
 7 **Q.** I just want to clarify. Have you viewed the HCA map that's
 8 on file with the PUC?
 9 **A.** Yes.
 10 **Q.** The one that's on file in this building?
 11 MS. SEMMLER: Asked and answered. Yes. Asked and
 12 answered.
 13 **A.** I'm aware of the HCA maps that I reviewed.
 14 **Q.** You did review them. Okay. Did you have to sign the
 15 statement to review them confidentially?
 16 **A.** Sure did.
 17 **Q.** Okay. This is all new to me so I'll ask another question
 18 in relation to that. Have you ever had to sign a statement like
 19 that to look at an HCA map?
 20 **A.** Not in the past, but I've had to sign confidentiality
 21 agreements and been turned down on similar data requests of
 22 similar sensitivity before.
 23 **Q.** Okay. On line 45, 46 of your direct testimony you make
 24 reference to the absence of a shape file data and limiting and
 25 resulting in more general recommendation and additional

1 requirements.
 2 Is that statement saying that additional information is
 3 needed, or has that been resolved in your mind?
 4 **A.** I think it's been resolved. I mean, from an outside
 5 inquirer or reviewer that data is entitled and designed for the
 6 pipeline operator to use. You know, it's their responsibility
 7 to protect those HCAs. And they try to limit access to that
 8 data just for reasons that if it's floating around, those with
 9 poor intentions might know exactly where to go to cause a lot of
 10 harm.

11 So, you know, I'm comforted in knowing that as long as
 12 TransCanada has access to it and they're required to incorporate
 13 and plan for those particular instances of HCAs in their
 14 integrity management plan, I don't necessarily need to see it.

15 **Q.** And in terms of shape file, what's meant by a shape file?

16 Could you describe what that is?

17 **A.** I am not a GIS expert, but the shape file will include not
 18 only map layers but also data associated with features found in
 19 that particular area.

20 **Q.** So it's data that is connected to the map, a GIS map
 21 essentially?

22 **A.** Uh-huh.

23 **Q.** Okay. Lines 60 through 63 of your testimony where you're

24 talking about relevant data needed to identify drinking water

25 HCAs, how would the consultants or the people working with

1 TransCanada verify that without making contact with the water
 2 systems?

3 **A.** So you're saying that in the event that they did not make
 4 contact with the water systems?

5 **Q.** Yes.

6 **A.** When you say water systems what do you mean by that?

7 **Q.** The public drinking water systems in the area.

8 **A.** So --

9 **Q.** The rural water systems, the towns.

10 **A.** Are you suggesting foregoing the main holder of data at the
 11 SD DENR and contacting individuals directly?

12 **Q.** Yes. I'm asking would it be prudent to contact water
 13 providers in the area of the project?

14 **A.** I don't think so. You know, when you look at how the data
 15 is gathered, the DOT gathered this data by querying the dates.
 16 And they said, you know, please describe -- you know, provide us
 17 with your source water protection areas or wellhead protection
 18 areas in the event the State hadn't developed the source water
 19 protection areas yet.

20 So that's one resource and data set. So given the fact
 21 that that's provided and TransCanada contacts the South Dakota
 22 DENR to get any updated information, and given the fact that
 23 sort of the definition of a drinking water HCA discusses, you
 24 know, the actual protection of that source water for that
 25 system, I don't know the benefit of contacting the individual

1 water systems.

2 **Q.** In your work, have you worked with water systems in your
 3 line of work?

4 **A.** To the extent that I have to reference the maximum
 5 contaminant levels and understand drinking water standards. But
 6 not directly with water systems.

7 **Q.** Since 9/11 are you aware whether water systems have been
 8 reluctant to provide data to the Federal Government?

9 **A.** I have no idea.

10 **Q.** On page 3 of your direct testimony you're referring in
 11 lines 80 through 85 to topographic data and the capturing of
 12 subtle changes and also, I believe, the issue between 93 and 99
 13 of drainage and response to a spill following a drainage.

14 Were you present when testimony was presented on the coteau
 15 hill elevations in Marshall County?

16 **A.** Vaguely. The coteau sits higher than the area surrounding
 17 it.

18 **Q.** Yes. And were you present when the testimony was presented
 19 on the Crow Creek Drainage System?

20 **A.** I think I was here.

21 **Q.** Okay. And were you present when John Kirk of the Game,
 22 Fish & Parks testified about the relationship between the
 23 Crow Creek Drain and the James River?

24 **A.** I don't recall that. I think I was here for John Kirk's
 25 for sure, but I don't recall that.

1 **Q.** It was pretty late so it was a -- going back to your
 2 testimony on this page 3, page 73 you say that, Should begin
 3 actively collaborating to finalize their proposal for mitigation
 4 activities.

5 This would be in relation to Game, Fish & Parks. What
 6 would be likely proposed mitigation associated with ecological
 7 sensitive population in the event of a spill?

8 **A.** Well, the Draft EIS presents those proposed mitigation
 9 measures. And the Game, Fish & Parks basically provided
 10 information as well as the DOT HCA database, you know, what are
 11 the sensitive populations that need protection.

12 So TransCanada through comments from the U.S. Fish and
 13 Wildlife Service, vast experience in handling similar species
 14 have put together these mitigative measures.

15 My comments were is that, you know, there was some
 16 suggestions in the Draft EIS that additional surveys were being
 17 performed. I just thought it warranted additional
 18 recommendations that -- additional follow-up after these sort of
 19 in-progress surveys are finished.

20 **Q.** In your opinion as an expert for the State, should that
 21 work be completed before a permit is finalized?

22 **A.** Which permit?

23 **Q.** The permit that's going to be -- would be considered and
 24 issued by this Commission.

25 **A.** It's not required. And I think the timing of that

1 requirement -- you know, they have to identify HCAs before they
 2 start the pipeline. You know, they have to have designed
 3 mitigation measures and have them really be acceptable to
 4 regulated bodies before construction ever starts.
 5 So to have all their surveys completed and submitted prior
 6 to the issuance of a permit might not be realistic timing-wise
 7 because many of these species that they're surveying have
 8 certain -- real critical timing associated with that survey that
 9 may not fall in line with the permit issuance.
 10 Q. Well, following on that, would it be prudent or advisable
 11 to have that work done before the pipeline is turned on, before
 12 the oil is pumped?
 13 A. Well, refresh my memory. We're talking about mitigative
 14 measures?
 15 Q. Yes.
 16 A. Those mitigative measures will be completed and finalized
 17 before they even start construction. That's the basis for most
 18 of them is, you know, how they're going to be impacted by
 19 construction. So no doubt they'll be finalized and done.
 20 Q. Are they required to be done by the federal regulations?
 21 A. Those particular species require protection. They will
 22 have them done.
 23 Q. Okay. Items 80 through 86. You're referring to subtle
 24 changes in the topography that may influence flow patterns away
 25 from the pipeline.

1 Were you present or did you listen in when Dr. Rahn and
 2 Dr. Davis, the geologist and hydrologist, testified?
 3 A. Yes.
 4 Q. They expressed some concerns about drainage and this
 5 project. When you refer to subtle changes in topography, subtle
 6 changes in topography affect response or they affect the
 7 environment in the event of an emergency or a spill? Is that
 8 what you're referring to?
 9 A. In that particular section I was referring to the
 10 preliminary contributory pipeline segment map. And in one
 11 particular case sort of from a bird's eye view the pipeline from
 12 the scale of the topographic map that I was reviewing sure seems
 13 to indicate that the pipeline might sort of sit on the top of a
 14 saddle. So, you know, you can have the topography going either
 15 way.
 16 So, you know, probably based on the information I had at
 17 the time I just felt it was appropriate to say that you're going
 18 to have to do some ground truthing in those areas where subtle
 19 changes might affect the pipeline in different areas. And what
 20 I understand now is that's really the big part of that
 21 assessment program.
 22 So after HCAs are identified -- right now it's sort of on a
 23 preliminary basis. Once they get their teeth in and really
 24 start looking at these areas they will have to go out and ground
 25 truth and really identify the topographic relief and changes and

1 really identify flow patterns of a release should it occur in
 2 those areas that would affect an HCA.
 3 Q. So essentially they need to gather more detailed
 4 information?
 5 A. Yep. That's exactly the part of the process they're in
 6 right now.
 7 Q. Line roughly 98 through 99 -- I take that back. 96 through
 8 99 as a point of reference, Planning requirements for fixed
 9 facilities under the Oil Pollution Act of 1990 must calculate
 10 downstream planning distances for the worst case. In most
 11 instances these distances are 15 to 20 miles or more.
 12 It appears -- well, and my question is was this study --
 13 the work completed thus far by TransCanada and their experts,
 14 did it look 15, 20 miles or more?
 15 A. They haven't at this point. You know, they -- they picked
 16 a preliminary number and said, hey, listen. For the purpose of
 17 where we're at in the process now we're going to just assess at
 18 a basically 1-mile radius and assume near pipeline downstream
 19 transport.
 20 What they're going to have to do is plan for that worst
 21 case and look at downstream transport similar to how I responded
 22 to Mr. Tobin. That's a part of the process that's upcoming and
 23 has to be done to be incorporated in not only their emergency
 24 response plan but integrity management plan as well.
 25 Q. And in your opinion as an expert for the State, should that

1 be completed before a permit is issued by the South Dakota PUC?
 2 A. Not by design. Just the simple answer is that if they
 3 completed all of this and they weren't awarded a permit, it
 4 would be a significant amount of effort gone away. I mean,
 5 typically they're awarded a permit and then given the time to
 6 prepare those documents before operation.
 7 Q. If in this detailed study they encountered some additional
 8 information that they weren't aware of in the preliminary
 9 design, would that or could that change the way the pipe is
 10 constructed?
 11 A. Well, there you have the benefit of the integrity
 12 management plan rules and regulations. They have to design
 13 around that. You know, no doubt that they will gather
 14 additional information as they do their assessments of the HCAs
 15 and look at these areas.
 16 You know, if they identify something that's different, they
 17 have to report it to the DOT, and then they have to plan around
 18 it, regardless of whether it's now or next year. It's when it's
 19 identified.
 20 Q. And when you refer to DOT you're referring to the
 21 Federal --
 22 A. Uh-huh.
 23 Q. -- Department of Transportation?
 24 A. Yep.
 25 Q. They would be responsible for making sure that change,

1 subtle change, was completed?
 2 **A.** Yeah. They have to report it within a year. And I did
 3 have the benefit of reading some administrative notice of
 4 amendment and violation letters where I think they referenced it
 5 being penalties for just this particular lack of planning to be
 6 \$100,000 a day per violation.
 7 **Q.** \$100,000 a day until they fix it?
 8 **A.** Uh-huh.
 9 **Q.** Okay. If it involved improperly designing a pipeline, how
 10 would you go back and fix it after that line were built?
 11 Wouldn't that be quite expensive?
 12 **A.** I don't think we're talking about the improper design of a
 13 pipeline. We're talking about the protective measures
 14 associated with HCAs.
 15 **Q.** I see. In response to Mr. Tobin on page 4 of your
 16 testimony you talked about the coordination that would have to
 17 be developed in terms of developing emergency response plan.
 18 How is the community involved based on your experience in
 19 that kind of planning, local community?
 20 **A.** I would say it depends on the industry, the operator, the
 21 community. I think the community can provide some valuable, you
 22 know, local information and assistance.
 23 So an example of that is some of the things that we've seen
 24 in Minnesota where a number of industry groups kind of come
 25 together and, you know, said, hey, listen, we have this

1 protective resource. What can we do to assist in it?
 2 So not only can they provide additional information
 3 local -- you know, that's why they query the local state
 4 departments here to gather additional information. Those
 5 community individuals can assist in the preparedness after the
 6 fact and maybe provide local information about that particular
 7 resource prior to for planning purposes.
 8 **Q.** Would local go down to the county and city level as well?
 9 **A.** I think it could go to any level. It really depends who
 10 wants to get involved and has the time and energy to do it.
 11 **Q.** And when you referred to drill and preplanning would that
 12 involve like local fire departments and county government?
 13 **A.** Absolutely. Any resource that, you know, TransCanada has
 14 identified to assist them in responding, you know, they're going
 15 to have to really be a big part of that plan, understand it, and
 16 be able to implement it.
 17 **Q.** Would it be fair to say that they'll need cooperation at
 18 the county and local emergency response level?
 19 **A.** It depends how it's designed. In areas of really lack of
 20 resources TransCanada may be the real sole provider. They may
 21 have to really be the resource in that area if it's not
 22 available.
 23 In other areas there might be a lot of collaboration and
 24 assistance.
 25 **Q.** On page 4 of your testimony essentially it's between lines

1 126 and 128 the proper implementation of the regulatory design
 2 requirements, construction and operation requirements and the
 3 recommendations provided with this document, your document,
 4 reduces risk and health and safety impacts.
 5 Is that what you're saying? Reduces, but does it eliminate
 6 the risk?
 7 **A.** Risk is very difficult to completely eliminate in any
 8 circumstance.
 9 **Q.** So you're saying it reduces it? If they do everything that
 10 they say they're going to do and if they adopt the
 11 recommendations that you've proposed, it would reduce it?
 12 **A.** Absolutely.
 13 **Q.** But it wouldn't eliminate it completely, would it?
 14 **A.** No. Just as any other protective measures that are
 15 designed for any other industry have a certain degree of risk
 16 still associated with them.
 17 **MR. HOHN:** Thank you.
 18 **MR. SMITH:** Commissioners, do you have questions?
 19 Commissioner Kolbeck?
 20 **COMMISSIONER KOLBECK:** I guess, yeah, I do. First of
 21 all, I guess what exactly -- can I ask Mr. Hohn a question?
 22 **MR. SMITH:** No.
 23 **COMMISSIONER KOLBECK:** I was wondering --
 24 **MR. SMITH:** I guess you're the Commissioner so you can
 25 do whatever you want, but he's not under oath at the moment.

1 **COMMISSIONER KOLBECK:** Okay. The South Dakota DENR,
 2 Game, Fish & Parks, and DOT those were the contacts that were
 3 made. Would there be any other contacts that you would think
 4 they were legally obligated to make?
 5 **THE WITNESS:** I don't know that they're legally
 6 obligated to contact the SD DENR or the Game, Fish & Parks.
 7 **COMMISSIONER KOLBECK:** Okay.
 8 **THE WITNESS:** But it's appropriate to do so to make
 9 sure they've got up-to-date data.
 10 **COMMISSIONER KOLBECK:** Okay. Are the source waters
 11 kept track of at the South Dakota DENR?
 12 **THE WITNESS:** Say that again.
 13 **COMMISSIONER KOLBECK:** Are the source water protection
 14 areas -- that's kept track of at the South Dakota DENR?
 15 **THE WITNESS:** Yes.
 16 **COMMISSIONER KOLBECK:** So if a water source was
 17 reluctant to give data to the Feds or SD DENR, that would be
 18 kind of stupid on their part, wouldn't it?
 19 **THE WITNESS:** I guess that possibility exists. But
 20 there's a lot of purpose to that development of that source
 21 water development area. I'd be surprised to find someone
 22 wouldn't accept Mr. Markley's assistance he offered the other
 23 day.
 24 **COMMISSIONER KOLBECK:** Would that be TransCanada's
 25 fault if a water source chose not to participate?

1 THE WITNESS: You know, for example, there might be a
2 source water area that may have not been identified in SD DENR's
3 data or the HCA data provided by U.S. DOT. But it's still
4 TransCanada's objective to identify those areas.

5 COMMISSIONER KOLBECK: Okay. So even though if they
6 decided not to participate, didn't give the information to the
7 SD DENR, if TransCanada discovered it, they're legally obligated
8 to deal with it?

9 THE WITNESS: Yeah. If they became aware of a
10 drinking water HCA that met the code definition, they're going
11 to have to plan for it.

12 COMMISSIONER KOLBECK: Okay. I must be in a bad mood
13 this morning. The rest of my questions are kind of sharp so I'm
14 not going to ask them.

15 THE WITNESS: Thank you.

16 MR. SMITH: Other Commissioner questions?

17 CHAIRMAN JOHNSON: I'd like to hear Commissioner
18 Kolbeck's other questions.

19 COMMISSIONER HANSON: So would I.

20 MR. SMITH: Too much Christmas partying. Commissioner
21 Hanson, do you have questions?

22 COMMISSIONER HANSON: He must not be happy with his
23 gift.

24 Good afternoon -- or morning, I guess we are still.

25 THE WITNESS: Good morning.

1 COMMISSIONER HANSON: Mr. Murdock, there were some
2 questions that were asked of you I believe by Mr. Tobin, I'm not
3 certain, where you chatted a little bit about drain fields and
4 that they could provide somewhat of a conduit for -- certainly
5 that's their purpose is to help transport water from one area to
6 another.

7 THE WITNESS: Uh-huh.

8 COMMISSIONER HANSON: That they could become a conduit
9 for oil in the case of a spillage as well.

10 Have you -- may or may not be within your expertise,
11 but give me an idea. Are you familiar enough -- what do you
12 know about drain fields, if I can ask you? I don't know whether
13 or not I can ask you some questions.

14 THE WITNESS: I think I have some additional
15 information to offer with the benefit of seeing a few other
16 documents.

17 COMMISSIONER HANSON: Have you looked at -- before you
18 get into that, you haven't walked this.

19 THE WITNESS: No, I haven't. I have no local
20 knowledge of the pipeline route with regard to drain fields.
21 But I do know each drainfield crossed has to be repaired in the
22 same fashion that it was found or in better condition. So as
23 they identify drain tiles -- not drain fields but drain tiles
24 that the pipeline crosses they're going to be staked, marked,
25 and repaired after the pipeline goes through.

1 It's apparent that, you know, they need to basically
2 identify the location of that drain tile, confirm that it was
3 repaired, and just by the nature of that data collection they're
4 going to have -- would likely have that available in the event
5 of a release.

6 COMMISSIONER HANSON: That's exactly the question I
7 wanted to get to. So I appreciate you cutting to the chase. So
8 as far as the process of a mitigation plan in case there is some
9 remediation that's necessary just in the construction of a
10 pipeline, one would assume that they will run across and be able
11 to identify drain fields that may have been put in a couple
12 generations ago that have been forgotten even?

13 THE WITNESS: Right.

14 COMMISSIONER HANSON: And that they at that time would
15 be able to set out a -- their own map, locate, be able to
16 identify those in case there is a remediation that's necessary?

17 THE WITNESS: Exactly.

18 COMMISSIONER HANSON: Okay. No further questions.

19 MR. SMITH: Is there redirect from staff?

20 REDIRECT EXAMINATION

21 BY MS. SEMMLER:

22 Q. You indicated, Mr. Murdock, that TransCanada will perform a
23 fate and transport analysis as part of their integrity
24 management plan.

25 Would this fate and transport analysis require that

1 TransCanada assess the potential impacts to HCAs even when they
2 are located more than 5 to 10 miles downstream?

3 A. Yeah. They're definitely going to have to look at the
4 transport of sort of a worst-case release, and if that's 5
5 miles, if that's 10 miles, if there's some physical structure
6 that, you know, doesn't -- that's going to encounter that
7 wouldn't require them to look any further, if their emergency
8 response plan would dictate that they can get to that release in
9 a given amount of time, they may not have to look any further as
10 well. But they're going to have to plan for a downstream fate
11 and transport, sure.

12 Q. Given the definitions in CFR 195.450, those being the HCA
13 definitions, would the mere presence of water distribution lines
14 in the pipeline right of way appear to meet those HCA
15 definitions?

16 A. Well, in reviewing the definitions in each case, whether
17 it's a public water system, they talk about the source water
18 intake. And given the definitions of a source water protection
19 area or a wellhead protection area, they really look at the
20 water source and protecting that water source.

21 I haven't read anywhere that -- or understand the intent of
22 those to be protective of simply the lines of pipe. I know that
23 the South Dakota DENR source water protection areas don't take
24 into account the distribution lines.

25 MS. SEMMLER: Nothing further. Thank you.

1 MR. SMITH: TransCanada, Applicant, do you have
2 questions, Mr. White?

3 MR. WHITE: Just a few.

4 CROSS-EXAMINATION

5 BY MR. WHITE:

6 Q. Just wanted to confirm with you that the process for the
7 identification of HCAs is a process that's governed by 49 CFR;
8 is that correct?

9 A. Yes.

10 Q. And is the process of developing an integrity management
11 plan based on the HCAs that are identified, is that also
12 governed by 49 CFR?

13 A. Yes.

14 Q. And are there sanctions for failure to comply with those
15 requirements?

16 A. Yes.

17 Q. And with respect to that process, would it be your
18 understanding that the development of -- or the identification
19 of HCAs that's been undertaken by TransCanada to date is
20 essentially a preliminary screen, in effect, used for initial
21 planning and the NEPA process? Is that accurate?

22 A. Yes.

23 Q. And is it accurate to state that TransCanada's required to
24 conduct its emergency response planning based on a worst-case
25 scenario?

1 understanding of the process and its regulated nature at the
2 federal level, would you have an opinion as to whether it would
3 be appropriate for the PUC to permit the Keystone Project
4 without a final resolution of each and every HCA, understanding
5 that that process is one that goes forward even through
6 construction and is overseen by the DOT?

7 A. Yes.

8 Q. And what would that opinion be?

9 A. I think the -- it's very prudent based on those regulations
10 that a permit could be issued given that, you know, there are
11 such strict regulations to provide this information, not only in
12 the emergency response plan prior to the startup of the pipeline
13 but to have identified the HCAs prior to startup and then to
14 finish the planning associated with it within a year's time.

15 Q. Okay. So based on your review of the work that's been done
16 so far with respect to identification of HCAs and the related
17 emergency response planning, is there anything that indicates to
18 you that TransCanada has not complied with all of the applicable
19 rules and laws in that area today?

20 A. I have not identified any shortcomings in that area.

21 MR. WHITE: Thank you.

22 MR. SMITH: Follow-up, Mr. Tobin?

23 RECROSS-EXAMINATION

24 BY MR. TOBIN:

25 Q. One of the things that maybe I have a question about is we

1 A. I believe it is.

2 Q. Is that required by 49 CFR?

3 A. I can't cite the specific reference on it.

4 Q. Okay. And it your understanding that as the process goes
5 forward that TransCanada will indeed conduct ground truthing and
6 identify drain tiles during the discussions with landowners and
7 even during the construction process?

8 A. That is my understanding, yes.

9 Q. And would it be their obligation at that point to reflect
10 that new information in its emergency response planning?

11 A. Yes. And -- yes.

12 Q. I just wanted to clarify one issue. I think you talked
13 about there's a discussion about 5 miles downstream and one mile
14 downstream with respect to the HCA identification that
15 TransCanada has undertaken to date. Is it your understanding
16 that the 5 miles was the distance used for assessing downstream,
17 in other words water body flow, HCAs that might be impacted by
18 water body flow for 5 miles downstream?

19 A. I believe that was the initial assessment area, 5 miles.

20 Q. Okay. And the 1 miles, would that have been related to
21 overland flow?

22 A. Yeah.

23 Q. 1 mile away?

24 A. Yes.

25 Q. 1 mile away from the centerline. So based on your

1 talk -- or I guess much of the testimony focuses on mitigation,
2 planning after construction.

3 But is it your opinion that a substantial amount of
4 mitigation planning may include routing during construction of
5 the line, meaning in essence could it reduce the effects of an
6 event, of a spill event, if routing were such that it either
7 took into account these saddle variations or HCAs?

8 A. Well, let's back up. I don't know that a significant
9 amount of mitigation really occurs in the sense of HCA
10 protections after the pipeline's constructed. Most of those
11 mitigative measures with regard to HCAs are going to occur and
12 be pretty well assessed before construction and then finalized
13 after construction.

14 Q. But not necessarily before routing?

15 A. It's not my complete understanding of the entire routing
16 process. To my knowledge and from a business risk perspective,
17 I would suspect that those types of issues are closely looked at
18 in planning.

19 Q. But the testimony was that the final plan can take up to --
20 I'm sorry. Certainly before the oil can flow through the
21 pipeline I think there was some testimony that certain parts of
22 it are a year after construction?

23 A. Yeah. The release response plan has to be prepared and
24 finalized prior to oil in the pipeline, okay? The integrity
25 management plan needs to have identified HCAs prior to the

1 startup of the pipeline. And they have up to a year to finalize
 2 that integrity management plan after startup.
 3 **Q.** But I guess my question is if there were consideration of
 4 some of those factors during the time of selection of pipeline
 5 route, would it be possible to avoid some of the subsequent
 6 mitigation planning requirements because of routing?
 7 **A.** Definitely. You know, pre -- route planning, I'm sure it
 8 takes that into account. I haven't been privy to the actual
 9 route planning, but we've heard testimony all week about whether
 10 it's geological, hydrogeological, endangered species. I am sure
 11 that that is a big part of route planning.
 12 **Q.** Yet, there are some things that we don't necessarily -- we
 13 know for certain haven't been taken into account, for instance,
 14 as a small example, drain tiles or other subterranean features
 15 that won't be discovered until we get there, so to speak?
 16 **A.** Nor could they really be discovered economically at this
 17 point.
 18 **Q.** I'll accept that. But what about the terrain features that
 19 you talk about as far as the subtleties of a saddle? You know,
 20 if on one side of the saddle it flows to a significantly -- or
 21 more significant area than on the other side, is that a routing
 22 consideration that may make a significant difference in planning
 23 or mitigation efforts?
 24 **A.** It could be a routing consideration, and most definitely if
 25 it was identified to be a significant concern to a HCA that

1 hadn't been identified, they'd have to take into account and
 2 plan for it no matter where it was in the process.
 3 **Q.** There was some discussion earlier on about the DOT files.
 4 Do you have a recollection of how recent that data is that you
 5 reviewed or how recent it was updated?
 6 **A.** I do. My inquiry into that suggests that HCA data was
 7 populated, you know, around 2001 by the DOT. And I'm sure that
 8 was sort of an ongoing process during that time.
 9 In 2003 they updated the census data sort of globally
 10 throughout that database. Drinking water HCAs, ecological
 11 information, since sort of the database got completed, whenever
 12 that was, haven't been updated since then.
 13 **Q.** So is there a mechanism for TransCanada to receive the most
 14 current data in completing their plans? Is there a central
 15 clearing house, and if there are some entities that aren't
 16 reporting, how do you handle that?
 17 **A.** I think TransCanada has hit on those data sets. The DOT
 18 purchased and queried data from State agencies in the
 19 development of that database. So, again, TransCanada has
 20 queried those same resources. And you'll find that information
 21 in the Draft Environmental Impact Statement.
 22 I think what the DOT is hoping for is a little monies for
 23 them to update the database, but it's still in the lap of
 24 TransCanada to go get that data, whether or not it's in the HCA
 25 database or not.

1 **Q.** Is there a mechanism specified either by rule or regulation
 2 on how to obtain the most current and up-to-date data?
 3 **A.** I have seen a number of guidance or -- guidance documents
 4 about how to obtain GIS information to help formulate HCAs.
 5 **Q.** And how about HCA information if there's been any update to
 6 that?
 7 **A.** I haven't seen any direct guidance with regard to that, but
 8 the guidance itself that talks about obtaining GIS information
 9 would direct them to HCA-related data. That's the whole focus
 10 of the guide.
 11 **Q.** You mentioned in part of your testimony the discussion
 12 about -- I think the State asked the question regarding water
 13 lines. And regarding drain tiles you said that the drain tile
 14 if it is crossed has to be put back into as good or better
 15 condition than before the pipeline was installed.
 16 Is the same true for water lines that are crossed?
 17 **A.** I'm not as familiar with that, but, you know, the drain
 18 tile experience is destruction. You know, it's condition.
 19 Probably the integrity of it, it might be an old drain tile, but
 20 either way I think it's economically easier to cut it and
 21 replace it.
 22 I'm not sure about the procedures for crossing any other
 23 utilities. I'm just not that familiar with it.
 24 **Q.** One final question. And, again, this is just a nuance of
 25 drain tile because I'm kind of like you. I'm familiar with it.

1 The pipeline, I understand, is going to be 4 feet deep
 2 approximately, give or take. There are drain tiles that are
 3 deeper than that so they won't necessarily be cut or disrupted
 4 by the pipeline.
 5 Is there a mechanism for determining the location of those
 6 in the event of a spill?
 7 **A.** I think TransCanada has dialogue with the farmers and
 8 probably gathers that information. I think I've heard reference
 9 to it this week or read it. I don't recall for sure. But it is
 10 an interest of theirs. It is a concern of theirs. And I have
 11 seen it written in documents that, you know, the best source of
 12 that information is the current farmer, but it may not be that
 13 good of a source of information.
 14 **Q.** So -- I'm sorry. Go ahead.
 15 **A.** There very likely could be drain tile lines that aren't
 16 documented by the farmer, aren't encountered during
 17 construction, but if they aren't necessarily crossed, there will
 18 be at least some separation distance from free-flowing crude oil
 19 as one consolation.
 20 **Q.** So would it be your recommendation that those discussions
 21 with the individual landowners take place during the
 22 construction?
 23 **A.** Yeah. I didn't have the benefit of being here when
 24 Buster Gray's testimony was given, but I would suspect that he'd
 25 be a good source of that information on how they handle it.

1 MR. TOBIN: Thank you.
 2 MR. SMITH: Follow-up, Mr. Hohn?
 3 MR. HOHN: Yes.
 4 RE-CROSS-EXAMINATION
 5 BY MR. HOHN:
 6 **Q.** Following on the drain tile question, did you have the
 7 opportunity to review filed testimony from Ron Schaeffer, a
 8 farmer from Hutchinson County?
 9 **A.** I think I might have read it, but I don't recall it. Can
 10 you help me out?
 11 **Q.** Mr. Schaeffer wrote a letter -- testimony, actually. He's
 12 an Intervener. He submitted testimony to the PUC about his
 13 contacts from land agents and his concerns about being able to
 14 drain tile his farm to increase production. And I don't recall
 15 whether he had tile or he was planning to develop his farm with
 16 tile. I think it was a bit of both.
 17 The question is -- and his testimony's a matter of record
 18 so I won't try to state what he said exactly.
 19 MR. WHITE: I'm going to object to this line. The
 20 witness is not familiar with the testimony. Mr. Hohn is
 21 restating it but doesn't recall what it says. It's going to be
 22 very difficult for the witness to answer a double hypothetical
 23 question here.
 24 MR. HOHN: Mr. Smith, based on --
 25 MR. SMITH: Go ahead. I'm going to hear it and then

1 I'm going to rule on his -- I don't know where you're going with
 2 this.
 3 **Q.** Based on your experience with drain tile and how a project
 4 might affect this, would it be prudent or advisable that during
 5 the easement and planning process that drain tile be considered
 6 in the design of the pipeline?
 7 Based on written comment received from a landowner in the
 8 path of the project?
 9 MR. SMITH: I'll overrule the objection if he can.
 10 Don't answer, though, if you don't know the answer.
 11 **A.** Ask it one more time.
 12 **Q.** If a landowner being crossed or in the path of the pipeline
 13 were to submit his plan for drain tile on his farm and ask that
 14 that be considered as part of the design, would that be prudent
 15 to include in the design of the project before it was
 16 constructed?
 17 **A.** I guess you'd have to get a lot more detailed with regard
 18 to what you mean by considered as part of the design. What are
 19 you referring to?
 20 **Q.** Well, I believe what his request was was he needed to
 21 put -- based on soil, he needed to put the pipe at a certain
 22 depth to drain it properly. And that might require an
 23 adjustment in the depth of their pipeline.
 24 **A.** I can't really comment on it. You know, there's a lot of
 25 factors associated with that. We don't even know what depth the

1 farmer even wants to put it in.
 2 **Q.** He had it in his testimony, but I'll move on to the next
 3 issue.
 4 Did you review the testimony presented by Applicant's
 5 expert, DNV, risk management?
 6 **A.** No.
 7 **Q.** Okay. Well, let me ask a follow-up to that. Wouldn't that
 8 be useful to review as part of your current task on behalf of
 9 the State?
 10 MS. SEMMLER: I think we're getting outside the scope
 11 here of redirect. I'm going to object.
 12 MR. SMITH: I'm going to sustain that.
 13 MR. HOHN: Okay.
 14 **Q.** Were you present when David Wade, the manager of the BDM
 15 Rural Water System, presented testimony?
 16 **A.** No, I was not.
 17 **Q.** Did you have the opportunity to review his testimony?
 18 **A.** I have not. I've only heard references to it.
 19 **Q.** Okay. In terms of HCA, you stated here earlier that
 20 TransCanada was looking at a 1-mile and a 5-mile zone. Which of
 21 those two affected HCA? Was it the 1-mile, within 1 mile of the
 22 pipe?
 23 **A.** Preliminary looks, both could affect it. One's an overland
 24 flow. One's a stream flow. Both will be revised as necessary
 25 based on additional assessment.

1 **Q.** In his filed testimony and in his verbal testimony to the
 2 Commission, Mr. Wade testified that his well was within 11 miles
 3 he felt of the pipeline. The question for you would be -- and
 4 he also stated that he felt --
 5 MR. WHITE: I'm going to renew the objection to
 6 restating testimony that the witness is not familiar with.
 7 MR. HOHN: It's in the record.
 8 MR. SMITH: Go ahead. Let's not restate all the
 9 testimony. Just ask him the question.
 10 **Q.** If a well for rural water system were within 11 miles and
 11 the -- there's testimony from the operator that the area that
 12 the TransCanada Pipeline is crossing through is part of the
 13 recharge of that well, should that be considered in your opinion
 14 as part of an HCA review, 11 miles from the pipeline?
 15 **A.** Can I elaborate just a little bit?
 16 **Q.** Please.
 17 **A.** You might have an HCA identified in an area there's no
 18 potential to impact it. It might be defined as an HCA. If
 19 there was a pipeline running over or near it, it might get some
 20 level of protection in the integrity management plan. So just
 21 because an HCA is identified doesn't mean it receives certain
 22 protections if, for example, it's uphill and can't be impacted.
 23 If you -- just as a point of reference, the source water
 24 protection areas that the SD DENR provided, you know, they're
 25 protecting I think we heard Mr. Markley say for a 10-year

1 distance of travel. You know, they might only be a 1- to
 2 2,000-foot diameter or radius from the point source of 10 years.
 3 It's highly unlikely that something that is 11 or 12 miles away
 4 could be impacted.
 5 So really the research done associated with identifying
 6 those HCAs and looking at, you know, is it conceivable for those
 7 to be impacted, you know, that fate and transport, that's that
 8 detailed analysis, can that HCA realistically be impacted?
 9 Q. And so combining the two as you've just done, the 10-year
 10 flow, fate and transport, and the 11 miles of distance, if you
 11 never looked at it, you wouldn't know -- TransCanada wouldn't
 12 know if they didn't look at it, would they?
 13 A. Their charge is to look at HCAs, and their charge is to
 14 identify whether or not they can be impacted that's part of the
 15 process that's upcoming. And, you know, you could extend that
 16 to 50 miles and make the same statement at this point. But, you
 17 know, I think it's just a generally accepted industry standard
 18 is really where they're at right now for this preliminary
 19 evaluation.
 20 Q. In that same vein, if a leak occurred, a spill, large spill
 21 occurs in Marshall County, what steps then would be taken to
 22 determine if any part of the spill is moving toward a well like
 23 the BDM well? What steps might be taken?
 24 A. You're starting to get outside the area of my real focus,
 25 you know. I was really looking at the HCAs. With any

1 environmental investigation if a spill occurs, you identify the
 2 horizontal and vertical extent, assess it, plan remediation
 3 effort to remove it. The same sort of processes used for all
 4 types of releases I'm sure would be implemented here.
 5 Q. So would part of that process as far as your experience
 6 involve planting wells, test wells, and continuing to monitor
 7 the flow?
 8 MR. WHITE: Objection. Mr. Murdock's testimony
 9 relates to the identification of HCAs by TransCanada and its
 10 adequacy. We're way beyond the scope of that at this point.
 11 MR. SMITH: Sustained.
 12 Q. Regarding your comments about fate and transport, in layman
 13 terms can you explain what that involves, the fate being what?
 14 A. I normally leave that up to the engineers and modelers.
 15 I'm not really qualified to discuss it other than just a brief
 16 overview of it. You know, the aspects that affect the eventual
 17 fate and transport have to be looked at and calculated into a
 18 model to decide, you know, what are the potential end results.
 19 That's about to the extent I can talk about it.
 20 Q. One additional question, if you can address this to follow
 21 up on that then, if you had a steep grade and a spill occurred,
 22 that fate would be different than if you had a flat elevation?
 23 MS. SEMMLER: I believe it was answered that this is
 24 outside his area of expertise.
 25 MR. SMITH: I don't know. On that question, does

1 that -- I think you did testify concerning the need with some
 2 surface water courses to take a look --
 3 THE WITNESS: It would be part of the downstream
 4 planning. It's just part of the process that's already
 5 outlined, yeah.
 6 Q. You would have to look at the elevation at the location?
 7 A. All that's aspects of the downstream planning.
 8 MR. SMITH: I guess I overruled your objection,
 9 Ms. Semmler.
 10 Q. We have 220 miles of pipeline crossing all sorts of
 11 terrain. Is part of the planning for fate and transport, do
 12 they actually look at each segment of pipe and say what would we
 13 do if X, something happened to this location?
 14 MS. SEMMLER: Previously testified that each segment
 15 of the pipeline will be looked at by engineers, and those types
 16 of models will be developed. This is not what Mr. Murdock
 17 studied.
 18 MR. SMITH: Sustained.
 19 MR. HOHN: No further questions. Thank you.
 20 MR. SMITH: Any additional Commissioner questions
 21 following up on that?
 22 CHAIRMAN JOHNSON: Mr. Murdock, can it be safely
 23 assumed that no matter how thorough a job a pipeline
 24 construction entity did prior to construction, that there might
 25 be the discovery of sensitive cultural and environmental

1 resources during construction that might cause an alteration of
 2 the route?
 3 THE WITNESS: I'm not familiar with what it would do
 4 to the route, but I -- you know, put a backhoe in the ground for
 5 that distance, you might find something new.
 6 CHAIRMAN JOHNSON: Well, I'm not asking about specific
 7 measures that would be taken. I'm just asking no matter how
 8 thorough the pipeline was, it is possible that you might uncover
 9 sensitive resources during construction? Do you think that's
 10 right?
 11 If that's outside your area of expertise, just tell
 12 me.
 13 THE WITNESS: Well, I think it is correct, and I think
 14 that's part of the reason why the integrity management plan is
 15 delayed. I am not the one to completely answer that question,
 16 but it sure seems to fall into appropriate planning.
 17 CHAIRMAN JOHNSON: Okay. Thanks.
 18 MR. SMITH: Other questions? I have just one question
 19 for you. You know, under just the way the system is set up in
 20 terms of designation of source water protection areas, the way
 21 it's set up, is that the responsibility of the State DENR?
 22 THE WITNESS: It's been their charge to develop the
 23 source water protection areas.
 24 MR. SMITH: In terms of at least identification of
 25 those for the DOT database.

1 THE WITNESS: I don't think they have any
 2 responsibility to the DOT database. Their data is queried by
 3 the DOT and included in it.
 4 MR. SMITH: Okay. Thank you. Any follow-up
 5 questions, Mr. White?
 6 MR. WHITE: Just one.
 7 RE-CROSS-EXAMINATION
 8 BY MR. WHITE:
 9 Q. Is it your understanding that the identification of
 10 additional HCAs or additional HCAs that might be impacted by the
 11 pipeline during the construction process would typically be
 12 mitigated by a change in the route, or would there be response
 13 planning and other mitigative measures that would be more likely
 14 applied in that instance?
 15 A. My knowledge is that there's mitigation planning done, not
 16 a change in the route.
 17 MR. WHITE: Thank you.
 18 MR. SMITH: Anything further?
 19 MR. HOHN: No additional.
 20 MR. SMITH: You're excused. Thank you, Mr. Murdock.
 21 (The witness is excused)
 22 (A short recess is taken)
 23 MR. SMITH: We're back in session following a brief
 24 recess.
 25 Staff, you may call your next witness.

1 MS. SEMMLER: Staff calls Mr. Dan Hannan.
 2 (The witness is sworn by the court reporter)
 3 DIRECT EXAMINATION
 4 BY MS. SEMMLER:
 5 Q. Mr. Hannan, could you please state your name, employer, and
 6 business address for the record.
 7 A. Dan Hannan, Associated General Contractors of Minnesota,
 8 525 Park Street, St. Paul, Minnesota. I was previously employed
 9 by Bay West from May of 2000 through November of 2007.
 10 Q. And tell us about your educational background.
 11 A. I have a Bachelor's of Science Degree in biology from the
 12 University of Minnesota. I also hold the credentials of
 13 certified safety professional and certified hazardous material
 14 manager.
 15 Q. State your work experience, please, Mr. Hannan.
 16 A. I immediately upon graduation from the University
 17 of Minnesota in June of 1990 I was hired by the Minnesota
 18 Pollution Control Agency within their Emergency Response
 19 Program. I served as the emergency response specialist for
 20 nearly 10 years while at the MPCA providing regulatory oversight
 21 for environmental emergencies including crude and refined
 22 petroleum pipeline releases.
 23 In May of 2000 I was hired by Bay West, Incorporated in the
 24 capacity of the emergency response manager and later as the
 25 corporate health and safety manager. While at Bay West I

1 managed response efforts addressing environmental emergencies
 2 including crude and refined pipeline releases. I also reviewed
 3 and constructed emergency planning documents required by state
 4 and federal regulations related to petroleum storage and
 5 transportation activities.
 6 While at both the MPCA and Bay West I participated with
 7 local emergency response planning activities to develop
 8 site-specific response strategies and stage appropriate response
 9 equipment for land-based and water-based spills.
 10 Q. And Bay West was hired by the Commission to consult with
 11 staff on this case; is that correct?
 12 A. That's correct.
 13 Q. Could you tell us in general what you reviewed or analyzed
 14 to file your prefiled testimony and to testify to the Commission
 15 today?
 16 A. I reviewed a series of documents associated with the
 17 project, including the frequency volume study Keystone Pipeline
 18 prepared by DNV Consulting, pipeline risk assessment
 19 environmental consequence filings prepared by ENSR, the Keystone
 20 construction mitigation reclamation plan, draft Keystone
 21 pipeline emergency response plan, and the Draft Environmental
 22 Impact Statement.
 23 Q. And where additional information was needed did you make
 24 such a request to a particular party?
 25 A. Yes, I did.

1 Q. To which party did you make such request?
 2 A. TransCanada.
 3 Q. And did TransCanada respond in a timely fashion?
 4 A. Yes, they did.
 5 Q. Also as part of your review did you look at the burden of
 6 proof contained in SDCL 49-41B-22?
 7 A. I did.
 8 Q. You'll find in front of you what we've marked for
 9 identification purposes as Staff Exhibit 3. Is that your direct
 10 prefiled testimony?
 11 A. Yes, it is.
 12 Q. Do you have any additions, deletions, or edits to make to
 13 that testimony?
 14 A. No, I don't.
 15 Q. You'll also find what's in front of you as Staff
 16 Exhibit 12. Is that your prefiled surrebuttal testimony?
 17 A. Yes, it is.
 18 Q. And do you have any additions, deletions, or corrections to
 19 make to that?
 20 A. No, I don't.
 21 Q. So if asked those same questions, you'd testify the same
 22 today?
 23 A. Yes, I would.
 24 MS. SEMMLER: I will offer Staff Exhibit 3 and 12.
 25 MR. WHITE: No objection.

1 MR. TOBIN: No objection.
 2 MR. HOHN: No objection.
 3 MR. SMITH: Staff's 3 and 12 are admitted.
 4 Q. With those being admitted, now could you just give us a
 5 general summary of the contents of both of those documents?
 6 A. The staff of the South Dakota Public Utilities Commission
 7 requested Bay West to assist with the evaluation of submitted
 8 documents regarding the proposed prevention preparedness and
 9 mitigative plans and measures related to the TransCanada
 10 Keystone Project pipeline operations.
 11 Prefiled testimony addresses several specific tasks asked
 12 by the PUC. With respect to review of the proposed response
 13 planning documents, I was not able to provide a complete review
 14 of the emergency response plan SPCC plans, which would be the
 15 spill prevention and control or counter measurement plans, and
 16 integrity management plan due to their draft form.
 17 Q. Are there any areas that you feel need clarification based
 18 on what you've heard or what you may have heard on the Internet?
 19 A. No.
 20 Q. Do you have any recommendations you'd like to share with
 21 the Commission today?
 22 A. I do.
 23 Q. Please proceed.
 24 A. With respect to the review of the spill frequency volume
 25 study, the study should be revised to better account for the

1 likelihood of damage to the pipeline caused by the following
 2 excavation activities: Agricultural activity where practices
 3 include plowing, tilling, tiling, et cetera, near or over the
 4 pipeline; future land development activities, both commercial
 5 and residential, where subgrade activities would be necessary;
 6 potential utility maintenance near the pipeline route; and
 7 assess the potential for necessary emergency excavation
 8 activities associated with it or emergency response type
 9 occurrences;
 10 For planning purposes where public or private drinking
 11 water supplies are being used preplan to ensure that alternate
 12 drinking sources of water can be provided for an extended period
 13 of time following a release to a potentially affected drinking
 14 water source;
 15 Certain planning and preparedness activities not
 16 specifically detailed in the emergency response planning and
 17 response plans are vital to improve cleanup outcomes following a
 18 pipeline release. Such planning and preparedness activities
 19 have been completed in other parts of the country with great
 20 success, most notably the efforts of the Wakota Care Community
 21 Awareness and Emergency Response Programs and the River Defense
 22 Network in Minnesota, allow for expedited employment of on-water
 23 response equipment at specific locations based upon preplanned
 24 strategies.
 25 These programs require collaborative efforts of federal,

1 state, county, and local environmental resource managers,
 2 community fire department personnel, spill response contractors,
 3 and industry.
 4 The objective of these cooperative programs is to preplan,
 5 pool response resources, develop site-specific response
 6 strategies, and exercise on those strategies regularly to
 7 clearly understand the logistical needs in changing river system
 8 dynamics.
 9 Once activated, the cooperative networks use local fire
 10 department, contractor industry resources to immediately deploy
 11 equipment based upon predetermined response priorities and
 12 objectives. Quick effective deployment lessens public safety
 13 health environmental threats and impacts.
 14 It is my recommendation that such detailed planning
 15 activities be completed in all presently and future identified
 16 HCA areas. Additionally TransCanada should be encouraged to
 17 work with state and local stakeholders to also identify other
 18 valuable resources such marinas, swimming beaches, campgrounds
 19 and the like and take appropriate preparedness response
 20 measures.
 21 It is my recommendation the PUC review for adequacy prior
 22 to the pipeline operation the completed response plan as
 23 required by 49 CFR Part 194.107 and prior to pipeline
 24 construction all completed spill prevention control and
 25 countermeasure plans as required under 40 CFR Part 112.

1 And finally it is my recommendation that TransCanada submit
 2 to the PUC prior to pipeline operation any draft version of the
 3 integrated management plan. That draft would include the
 4 identified HCAs that would be identified in the IMP or the
 5 integrity management plan.
 6 MS. SEMMLER: With that, the witness is available for
 7 cross.
 8 CHAIRMAN JOHNSON: Might just ask you to maybe pull
 9 that microphone a little closer. I think maybe you've come
 10 across soft on the Internet. Thanks.
 11 MR. SMITH: Mr. White.
 12 MR. WHITE: Thank you.
 13 CROSS-EXAMINATION
 14 BY MR. WHITE:
 15 Q. Good morning, Mr. Hannan.
 16 A. Good morning.
 17 Q. I believe that one of your recommendations was that the DNV
 18 frequency volume study should be updated to reflect certain
 19 activities that might occur in the pipeline area.
 20 Is it your opinion that the DNV study that was prepared for
 21 the purposes of at least the preliminary development of an ERP
 22 at this point was adequate for that purpose?
 23 A. I would say so, yes.
 24 Q. And did I understand you to recommend that the PUC review
 25 the emergency response plan prior to construction of the

1 pipeline?

2 **A.** That's correct.

3 **Q.** Is it your understanding that there will be a finally

4 developed emergency response plan prior to the commencement of

5 construction in early 2008?

6 **A.** Yes.

7 **Q.** Okay. If there were a process which resulted in several

8 refinements of an ERP such that the actual ERP was not complete

9 until late 2009, what would your recommendation be to the PUC at

10 that point?

11 **A.** I believe that the formal review of the emergency response

12 plan would assist in identifying any shortcomings with respect

13 to emergency response planning efforts. I think that there's

14 value in having the Commission look at that in draft form and

15 evaluate and monitor the efforts and activity of the

16 construction of that plan prior to its formal submittal.

17 **Q.** So your suggestion would be then that the PUC offer its

18 input into the draft version of the ERP that would be available

19 prior to the start of construction?

20 **A.** That's correct.

21 **Q.** Okay. And is it your view that the PUC has any role in the

22 ultimate approval of the environmental -- of the emergency

23 response plan finally developed by Keystone?

24 **A.** I'm sorry. What was the first part?

25 **Q.** Whether the PUC has a role in the approval of the emergency

1 response plan finally prepared by Keystone before operations?

2 **A.** I believe to the extent that they may wish to have an

3 outside party or resource look at it for the purposes of

4 completeness and compliance with the regulation.

5 **Q.** And which agency is it that actually approves the emergency

6 response plan?

7 **A.** That would be the Pipeline Hazardous Safety -- PHMSA.

8 Hazardous Material Safety Administration.

9 **Q.** Which is part of the Federal DOT?

10 **A.** Federal DOT. That's correct.

11 **Q.** Okay. I guess I'd like to refer you to your direct

12 testimony, page 5, lines 150 and 151. Do you see that

13 reference?

14 **A.** I do.

15 **Q.** And is that section of your direct testimony dealing with

16 the review by the PUC of the -- what's called there the oil

17 spill response plan, which do I understand that also to be the

18 emergency response plan?

19 **A.** That's correct.

20 **Q.** And is it your recommendation that that portion of your

21 direct testimony -- that the oil spill response plan be

22 submitted to the PUC for review 30 days prior to operation of

23 the pipeline?

24 **A.** That's correct.

25 **Q.** Is that consistent with your -- is that still your

1 recommendation?

2 **A.** That is still my recommendation.

3 MR. WHITE: Thank you.

4 MR. SMITH: Does that conclude your cross-examination?

5 MR. WHITE: Yes.

6 MR. SMITH: Mr. Tobin.

7 CROSS-EXAMINATION

8 BY MR. TOBIN:

9 **Q.** Good morning.

10 **A.** Morning.

11 **Q.** Could you explain a little bit more in detail your

12 recommendation regarding the agricultural activity and practices

13 which may require further study or further updating of the plan?

14 What's the concern there?

15 **A.** Can you give me a little more detail --

16 **Q.** I'm sorry. Forgive me. Lines 75 through 87 of your direct

17 testimony. It's a discussion of the assumption for the level of

18 effort and time necessary to make required repairs to the

19 pipeline. And the study should be revised to better account for

20 the likelihood of damage caused to the pipeline by the following

21 activities and of those you list agricultural activities.

22 Could you give me a little basis for that conclusion?

23 **A.** I believe there's been a number of instances obviously in

24 history of pipeline operation where those types of activities

25 have resulted in either damage and/or a direct impact to a

1 buried utility or in this case a pipeline that has resulted in a

2 release.

3 **Q.** Thank you. In part of your direct testimony -- I'm looking

4 specifically lines 109 to 112 you discussed as you've previously

5 mentioned today, A large oil release may sustain the fouling of

6 drinking water source for an extended period of time up to

7 several days.

8 Are you familiar with drinking water sources in

9 South Dakota?

10 **A.** Not intimately.

11 **Q.** Are you familiar with any of the drinking water sources in

12 South Dakota?

13 **A.** Just those associated with this particular project.

14 **Q.** And of those that you're aware of related to this project,

15 would that -- would finding alternate sources of drinking water

16 for some of the communities and individuals served by some of

17 the water sources prove to be a difficult or significantly

18 difficult in your estimation based on what you know and

19 understand of the water systems and the location of alternate

20 sources?

21 **A.** Based upon my experience with similar instances in which

22 public water supply systems have either been threatened or

23 actually impacted, in those instances alternate sources of water

24 have been provided. Obviously there's some logistical issues

25 that have to be overcome, whether it's an extended supply of

1 bottled water or the installation of a purification system such
 2 as a granular-activated carbon water treated system, actually
 3 treat the water prior to distribution.
 4 But those are options that would obviously have to be
 5 looked at at the time of the release to find out which would be
 6 most appropriate.
 7 **Q.** And is it your recommendation that such a response plan
 8 include detailed descriptions of how that should occur?
 9 **A.** I think that the detail is going to be difficult to account
 10 for. Obviously each release has its own unique set of
 11 circumstances both in space and time. And I think that the
 12 familiarity and the understanding again of the logistics behind
 13 providing a drinking source of water need to be understood. But
 14 accounting for the level of detail I think is premature.
 15 **Q.** Would it be your recommendation in light of the specificity
 16 and familiarity requirements that TransCanada work with the
 17 water systems to determine what exactly their needs are if there
 18 is a spill which contaminates a source in order to best create
 19 that plan?
 20 **A.** I believe that would be the expectation certainly. The
 21 pipeline -- the operator may have a -- obviously certain
 22 obligations according to the code and the rules. But, again,
 23 the development of a specific plan, per se, to deal with that
 24 contingency or that emergency I think is a little difficult to
 25 do.

1 **Q.** Is that outside the scope of what the federal regulations
 2 require of them?
 3 **A.** I believe it is.
 4 **Q.** But if you were able to create a set of rules to be created
 5 by the PUC, would it be something that would be reasonable in
 6 that if you could control such things would recommend that they
 7 do?
 8 **A.** Again, I believe that as a preventative measure or as a --
 9 I think that the -- if you're looking for a level of assurance
 10 that the pipeline company, the operator has the capability, I
 11 believe that that demonstration of that can come in different
 12 forms. I believe that to try to show that in document form
 13 prior to my -- again, might be a little premature.
 14 **Q.** I don't want to beat a dead horse, but I want to make sure
 15 my question is clear and so that I've got your answer on this.
 16 But and so if the source of water -- and let's just say, for
 17 instance, a ground water source were in some way contaminated by
 18 a spill, wouldn't it be necessary to be fully versed on the
 19 areas served by that system, the gallons required to provide
 20 minimum service, and what alternate sources are logistically
 21 available to properly remediate that situation even if for a
 22 short period of time until the primary sources are back in
 23 production?
 24 **MS. SEMMLER:** And I believe it was answered that those
 25 details are difficult to assess at this time and premature.

1 **MR. SMITH:** Do you have a response, Mr. Tobin?
 2 **MR. TOBIN:** I would say it's not so much as to whether
 3 the details be provided. I'm more asking if those are necessary
 4 in order to properly formulate a plan.
 5 **MR. SMITH:** Overruled. Go ahead and answer, if you
 6 can.
 7 **A.** Again, in my experience preplanning to that level of detail
 8 is something that is not critical to success. The installation
 9 of remediation systems or the supply of bottled water is
 10 typically completed at the time of discovery, at least from my
 11 experience.
 12 So in the case of a water treatment purification system,
 13 granular-activated carbon, I've been involved in several
 14 instances where small municipalities have been impacted by
 15 contaminated ground water. Systems are then engineered or
 16 designed in a very short period of time and constructed in an
 17 emergency fashion to afford safe drinking water to the
 18 community.
 19 **Q.** Just one more question, and I'll move on then. But is your
 20 answer predicated upon an alternate source available in which to
 21 filter through the carbon filters and other things?
 22 **A.** No, it's not.
 23 **Q.** Okay. Thank you.
 24 **MR. SMITH:** Mr. Hohn --
 25 **MR. TOBIN:** I'm not --

1 **MR. SMITH:** Sorry.
 2 **MR. TOBIN:** Just moving off that topic.
 3 **MR. SMITH:** I thought you were done.
 4 **MR. TOBIN:** Wishful thinking on your part, I'm sure.
 5 **MR. SMITH:** I love it. Thank you.
 6 **Q.** I believe you stated -- well, in your direct testimony on
 7 lines 125 through 129 you discuss three documents, I believe,
 8 that are the federal requirement.
 9 And in your direct testimony and in your testimony today
 10 did you indicate that those are not viewable because they're not
 11 yet prepared or completed; is that correct? Or in draft form?
 12 **A.** That's correct.
 13 **Q.** And when will they be in complete form, and will you have
 14 an opportunity to review them at that point in time?
 15 **A.** The operator is obligated obviously to complete these
 16 documents in certain time intervals as specified by the
 17 regulations. As I testified, it's my recommendation that some
 18 of these documents be submitted in draft form prior to certain
 19 time frames to allow for a preliminary review of the completion
 20 of the documents.
 21 **Q.** And then will you as the State's expert witness also
 22 conduct a review at that time, or will that be the PUC that will
 23 conduct the evaluation at that point in time or examination?
 24 **A.** I don't know that it's been established that in this
 25 particular case Bay West would be the entity reviewing the

1 document.

2 **Q.** On lines 131 through 134 there was a question regarding

3 the -- pardon me. That's part of what we just discussed.

4 On lines 158 through 163 of your direct testimony you

5 discuss HCAs and USA locations and the minimum requirements.

6 Could you elaborate for me on that a little bit about what

7 your opinion is regarding those requirements and why it's

8 important?

9 **A.** I believe that the reference that I provided there was for

10 planning purposes with respect to response equipment

11 specifically, identification of HCAs, and the assessment

12 evaluation of the response resources that would be needed to

13 adequately address a release at a particular location.

14 **Q.** And why is that information important?

15 **A.** It's important to -- for the purposes of successfully

16 responding to a release at a particular location. In this case

17 the locations that are required according to the regulations

18 would be those that have been identified as high consequence

19 areas or HCAs.

20 **Q.** Do the federal rules or the -- I'm sorry. The CFR

21 specifically state where the location of these -- this emergency

22 response equipment should be? Does it give any kind of

23 guidelines? Does it give a range?

24 **A.** No specific locations, but there are requirements with

25 respect to the amount of equipment that has to be made available

1 to address a -- in this case a worst-case discharge as

2 determined by the operator and the time frame in which a certain

3 amount of that equipment needs to be mobilized to an area for a

4 response effort.

5 **Q.** In your opinion, what is an appropriate response time for a

6 worst-case scenario?

7 **A.** Again, the regulations specify the time frames that are

8 required for high-volume areas as well as nonhigh-volume areas

9 according to 49 CFR.

10 **Q.** Then according to the CFR, do you have an opinion on where

11 the location of this equipment should be within South Dakota in

12 order to comply with the CFR requirement?

13 **A.** At this point in time I do not.

14 **Q.** Is that something that may be somewhat dictated by the

15 specifics of the geography and access and other things?

16 **A.** Correct. There obviously are a number of different issues

17 that have to be considered with respect to placing response

18 resources: Location, driving distance, likelihood of an

19 occurrence.

20 The objectives and priorities that would be established and

21 the strategies that would be established according to the

22 integrity management plan and so forth, all of those elements

23 are part of a collective mix in which you decide on the

24 placement of your resources.

25 **Q.** And does the IMP then also address the specific

1 requirements need based on the terrain, topography, makeup of

2 the ground at that point -- in that area of the pipeline?

3 **A.** I believe it does. It requires that all of those elements

4 be considered for the development of strategies in responding to

5 an occurrence at an HCA location.

6 **Q.** On lines 177 through 181 of your direct testimony you

7 reference -- or you actually recommend that downstream planning

8 distances on the order of 20 miles be evaluated.

9 Could you explain that just a little bit more for me,

10 please.

11 **A.** Again, I believe Mr. Murdock addressed this a little bit

12 earlier, but the operator is obligated based on their fate

13 transport modeling efforts to identify what they believe to be

14 down river at-risk resources and to plan accordingly.

15 The particular reference that I made was to that of a

16 comparable type of an evaluation that's currently required of

17 fixed facilities under OPA '90, the Pollution Act of 1990, in

18 the development of a worst-case discharge scenario and the

19 evaluation of downstream planning distances. And those projects

20 that I've been involved in in most cases where releases are

21 significant in size, those distances can be upwards in the order

22 of 15 to 20 miles.

23 But, again, it's the operator is -- the onus is placed on

24 the operator to completely define what those distances are based

25 on river dynamics, travel time, the properties of the oil and so

1 forth.

2 **Q.** On lines 218 through 224 of your direct testimony you

3 recommend that for preparedness activities that there be

4 cooperative arrangements with state and local agencies and first

5 responders.

6 Do you have any professional opinion on how those should

7 occur over and above what may be required by code?

8 **A.** I believe I offered those up in my recommendations, but is

9 it your desire to have me go through that again?

10 **Q.** Well, if that's what -- I guess what I'm trying to confirm

11 is what you discussed earlier, that that would be your response

12 to this question?

13 **A.** Yes, it would be.

14 **Q.** Okay. Then we don't need to go through it again. Lines

15 301 and 302, you state, It is imperative that the first

16 responder community be adequately trained to ensure protection

17 of nearby populations.

18 Are you aware of any federal requirements on TransCanada to

19 provide this training, or what is your knowledge of this?

20 **A.** Yeah. I believe that the integrity management plan makes

21 reference to certain training elements, and those training

22 elements extend not only for the operator's staff but also to

23 first responder communities, fire service personnel, and so

24 forth.

25 **Q.** Does it discuss the frequency the training must occur or

1 the breadth, the number of communities to be involved, any of
 2 those kind of factors?
 3 **A.** No, it does not. I don't believe it specifies the
 4 frequency, but there is a description of the content of the type
 5 of training as to the health and safety hazards associated with
 6 the operation of a pipeline with this type of product.
 7 **Q.** In your opinion is it important to a successful response
 8 that the community members be properly trained and as I think
 9 most of us are well-aware as those volunteer forces may rotate
 10 that they continue to be trained?
 11 **A.** I believe it is, yes.
 12 **Q.** I'm looking now at your resume. And in here you identify a
 13 category listed Related Project Experience. And I think there's
 14 one, two, three -- five different projects; is that correct?
 15 **A.** That's correct.
 16 **Q.** And were those -- which of those projects involved spills
 17 of some type?
 18 **A.** I believe it would be the first three.
 19 **Q.** And have those first three, are you aware of what caused
 20 the spill, meaning as part of your work were you made aware or
 21 were you aware of what the determination was of the spill?
 22 **A.** No, I was not.
 23 **Q.** Based on your knowledge and understanding of these
 24 projects, were they when constructed all in compliance with the
 25 federal requirements at that point in time?

1 **A.** I'm not in receipt of knowledge to answer that fairly.
 2 **Q.** You mentioned that in your testimony today that better or
 3 best response measures are obtained through cooperative programs
 4 and networks for HCAs.
 5 Is that mandated by the code?
 6 **A.** No, I don't -- no, it's not. I don't believe it is.
 7 **Q.** But it's your opinion that that is the best way to deal
 8 with local involvement?
 9 **A.** That's correct.
 10 MR. TOBIN: Thank you.
 11 MR. SMITH: Mr. Hohn.
 12 CROSS-EXAMINATION
 13 BY MR. HOHN:
 14 **Q.** Mr. Hannan, on page 3 of your testimony, 71 through 77, the
 15 first line of -- part of your testimony refers to whether a crew
 16 could be dispatched in a reasonable amount of time.
 17 What do you mean by the statement reasonable amount of
 18 time?
 19 **A.** I believe the reference goes towards the sentence following
 20 that, no time frame was provided and such repair work would
 21 require considerable coordination. I believe that there was
 22 just a little bit of a question on my part as to the quickness
 23 in which a response crew could be mustered to located the
 24 release, expose the release, and effectively patch or repair the
 25 line to stop or mitigate the release.

1 **Q.** The location of where those crews were stationed in
 2 relation to where the spill may be along this pipeline, distance
 3 would have a great deal to do with that response, wouldn't it?
 4 **A.** Distance would be one. Obviously the logistics required to
 5 get to the break or the leak site would come into play as well.
 6 **Q.** Weather conditions would have --
 7 **A.** Weather conditions.
 8 **Q.** In the application the Applicant states that they -- I
 9 think Mr. Jones testified they would have three employees
 10 stationed at Yankton.
 11 Are you aware of how far Yankton might be from, say,
 12 Britton, South Dakota?
 13 **A.** No, I'm not.
 14 **Q.** Okay. I'm going to try to make sure I don't duplicate
 15 questions he asked.
 16 Regarding your testimony on page 5, I believe it's 138
 17 through maybe 151, regarding oil spill response plan in template
 18 form 30 days prior to the operation of the pipeline, would it be
 19 useful or helpful for the Public Utilities Commission to seek
 20 local input on that plan before the -- before it was finalized?
 21 **A.** No. I believe that the reference there -- I think you're a
 22 little mistaken. The reference is with respect to an SPCC plan
 23 for the operation of the contractor yards would support the
 24 construction of the pipeline.
 25 **Q.** I see. Okay. I misunderstood. Then if we go down to the

1 next portion, item 152 through 159, the integrity management
 2 plan, was it your testimony that that be reviewed 30 days prior
 3 to operation?
 4 **A.** That's correct.
 5 **Q.** Would it be useful for public input on that document in
 6 your opinion?
 7 **A.** No, I don't.
 8 **Q.** Okay. The local responders would not be able to contribute
 9 anything to that, you don't think?
 10 **A.** They may or may not be able to contribute to it, depending
 11 upon obviously local knowledge with respect to the HCAs in
 12 question.
 13 **Q.** You've been on a number of spill sites and emergency
 14 responses based on your resume. Can you tell us generally what
 15 the size of the equipment is that would be needed to reach a
 16 site for response? Trucks, equipment, backhoes, that sort of
 17 thing.
 18 **A.** Yeah. The amount of equipment obviously again is dependant
 19 upon the circumstances. So the size, the amount, the type of
 20 equipment used is dictated by the cleanup objectives, the
 21 logistics that need to be overcome or addressed.
 22 In some cases it requires the construction of a temporary
 23 road to gain access into areas. It requires access into areas
 24 that would be considered wetlands or prairie wet at the time.
 25 So the remote locations obviously the equipment that are used in

1 heavy construction type equipment recovery equipment can include
 2 vacuum trucks, tanker trucks to off load recovered product into
 3 it, so forth.
 4 Q. So road access to a spill site would be important?
 5 A. It's very important to gain access obviously to the site
 6 where the oil is located.
 7 Q. Were you present when WEB Water's testimony was presented?
 8 A. No, I was not.
 9 Q. Have you seen or have you reviewed the WEB Exhibit 15? The
 10 cover would look like this (indicating).
 11 A. I'm sorry. Was that testimony yesterday?
 12 Q. Yes.
 13 A. Yes. I was present.
 14 Q. Okay. I'd like to hand you this exhibit, if I could. I
 15 don't know if it's on the table.
 16 MS. SEMMLER: Is Mr. Hohn now testifying for WEB Water
 17 or asking questions on behalf of WEB Water or himself as an
 18 Intervener?
 19 MR. HOHN: I want to ask him a question regarding an
 20 exhibit.
 21 MR. SMITH: Proceed. Can you find it up there? It
 22 should be up there somewhere.
 23 THE WITNESS: Here it is.
 24 Q. I'd like to draw your attention to page 30 of that exhibit.
 25 Do you see it there?

1 Shown in the exhibit the Crow Creek Drain is marked in
 2 blue. The TransCanada Pipeline location -- approximate location
 3 is marked in black.
 4 Do you see those?
 5 A. I do.
 6 Q. And in the center, the near center of the page between
 7 Sections 2 and 1, a measurement was made or represented by WEB
 8 that the distance between those two was 270 feet.
 9 Do you see that?
 10 A. I do.
 11 Q. Okay. I'd like you to go to the very next page then,
 12 page 31, which shows a June 28 photo of the Crow Creek Drain.
 13 And it's identified on the previous map. And then one
 14 additional page, 36, if you'd page to that page.
 15 And this is represented as the drainage canal in
 16 Section 11, 126, 59, and the approximate location of the
 17 TransCanada Pipeline is on the left.
 18 Do you see that there?
 19 A. I do.
 20 Q. In terms of emergency response, based on your experience in
 21 the event of a spill at this location, a major spill, what could
 22 be done to contain the spill and limit the impact?
 23 MS. SEMMLER: Beings this witness has no further
 24 information other than what's contained in these limited
 25 pictures, I'm going to object as to the relevance of any answer

1 we're going to get right here.
 2 MR. SMITH: I think that's probably a fair objection.
 3 Are there any generalizations you can provide, realizing -- I
 4 think we all realize that a spill can have an enormous amount of
 5 variability in terms of what it is.
 6 Do you have any generalizations that you could make?
 7 THE WITNESS: From the photo I can certainly speak to
 8 some of the typical techniques that are used.
 9 MR. SMITH: Okay. I think that's all I can do because
 10 obviously we don't know. Nothing is spilled there yet. In
 11 fact, there's not even a pipeline so it's very highly unlikely
 12 we've had a spill at this point in time to look at. Please
 13 proceed.
 14 A. Several -- from the photo several different techniques that
 15 come to mind. Obviously the immediate concern is to try to
 16 contain and control. In this particular case you may have a
 17 land-based component, overland flow going directly into the
 18 creek. The use of additional sand or earthen materials, a dike
 19 or berm to prevent additional material from getting into the
 20 creek.
 21 If you're trying to control the oil once it's entered the
 22 waterway, several come to mind. The deployment of what they
 23 consider containment booms, which are floating barriers that are
 24 used to contain, control, corral the oil.
 25 Given the width and the size of this particular creek, one

1 might even employ what's called an underflow dam, the use of
 2 earth or dirt to be dumped as basically a roadblock on the
 3 downstream side using a series of large PVC pipes that would
 4 then allow the relatively clean water from the creek to flow
 5 through the -- in effect a culvert system. An inverted culvert
 6 would allow the oil to be held back due to its properties of
 7 specific gravity of less than 1 and floating on water, again,
 8 allowing the creek to continue to move beyond that location.
 9 Q. Would that mechanism -- it would trap the oil or the carbon
 10 in the oil. Would it stop the benzene, toluene, and xylene if
 11 they became suspended?
 12 A. Typically with that particular situation you would have a
 13 certain fraction of the crude oil would dissolve into the water
 14 column, and there would be some component of a dissolve
 15 fraction. Typically the lighter ends, what are called VOCs,
 16 volatile organic compounds, would be dissolved in that water
 17 phase so there would be an element that would likely get beyond
 18 any specific location where you would try to control it or
 19 contain it.
 20 Q. And on the bottom of page 6, if I could refer you back to
 21 the testimony, please, the bottom of page 6, 194 to 196. You're
 22 referring to the FOSC, which I saw the definition of here a
 23 minute ago.
 24 A. Federal on-scene coordinator. That's correct.
 25 Q. And you have a recommendation on page 6. It is recommended

1 that this statement be modified to indicate that during the
 2 public safety phase of the incident the most senior public
 3 safety official, usually the local fire chief, is in charge and
 4 has full authority.
 5 I wondered about that statement. When you say the public
 6 safety phase, are there various phases to an incident like this?
 7 **A.** Yes, there are.
 8 **Q.** And could you walk us through the various phases?
 9 **A.** Yeah. Dependant upon the properties of the material
 10 released, obviously there's going to be -- in this particular
 11 case there would be a flammable or a fire component. Most
 12 oftentimes the initial response to release will be controlled by
 13 that local public safety official, usually the fire chief.
 14 That person's responsibility is life safety issues with
 15 respect to the community. So he or she will take appropriate
 16 action to ensure that the life safety aspect of the emergency is
 17 being addressed. There's quite a bit of latitude that's
 18 afforded to that local public safety official to mitigate that
 19 life safety hazard.
 20 As the scene of the site becomes more controlled and the
 21 public safety element starts to wane, the incident then evolves
 22 into basically an environmental cleanup. And it's at that time
 23 that the site is then released from a control standpoint from
 24 that senior public safety official, usually to the regulated
 25 party and/or environmental regulatory officials.

1 **Q.** And on page 7 then continuing on with that, line 202 to 204
 2 of your statement, the intent is the fire -- essentially the
 3 local fire chief is not to direct or take over response. You're
 4 referring to cleanup response?
 5 **A.** That would be correct.
 6 **Q.** So the local fire chief or local fire official is
 7 responsible for protecting the public like they always would,
 8 but when it comes to cleanup it's the Applicant's
 9 responsibility?
 10 **A.** That's correct.
 11 **Q.** On the bottom of page 7, 223 and 224 you refer to local and
 12 regional environmental trustees. What are you referring to
 13 there? Could you elaborate?
 14 **A.** Environmental trustees would be those that would have a
 15 vested interest obviously in the environmental outcomes that may
 16 be involved with a release, and from a planning standpoint
 17 additionally those that would be -- have a vested interest and
 18 have knowledge, local knowledge, as to resources and the
 19 dynamics that the resource might present from a planning
 20 preparedness standpoint.
 21 I think that there's added value that those trustees may
 22 bring from a planning and/or response standpoint.
 23 **Q.** Would those trustees have to be strictly governmental
 24 officials, or could they be others in the public who are
 25 trustees of resources?

1 **A.** It could be all of those.
 2 **Q.** On page 8 you refer -- on 232 you refer to exercises or
 3 drills annually. Are those drills -- do those drills involve
 4 strictly the Applicant's personnel, or would it involve local
 5 response people?
 6 **A.** The requirements as specified by federal regulation
 7 according to their oil spill response plan require the operator
 8 to drill or exercise with both internal or external resources on
 9 an annual basis.
 10 **Q.** Near bottom of page 8, 254 through essentially 261, you
 11 refer to natural resource damage assessment process under CFR.
 12 Can you elaborate on what that process involves?
 13 **A.** The natural resource damage assessment process is a
 14 means -- and, again, I think my testimony contains a fairly
 15 accurate description of what it is and what it does. It
 16 essentially allows the state-designated environmental trustees,
 17 a mechanism by which they can require a regulated party to
 18 evaluate damage and associated costs with returning that
 19 environmental impact back to a prerelease state.
 20 **Q.** Based on your knowledge of South Dakota, would that be the
 21 Department of Environment and Natural Resources?
 22 **A.** I would presume it would be. And it may include the Game,
 23 Fish & Parks as well.
 24 **Q.** Sure.
 25 **MR. HOHN:** I have no further questions. Thank you for

1 your testimony.
 2 **MR. SMITH:** Commissioners, do you have questions of
 3 Mr. Hannan?
 4 **COMMISSIONER HANSON:** I do not. Thank you.
 5 **COMMISSIONER KOLBECK:** I do, Mr. Hannan. Just to make
 6 sure, there are options to provide drinking water through
 7 temporary treatment?
 8 **THE WITNESS:** That's correct.
 9 **COMMISSIONER KOLBECK:** Okay. Is this common, commonly
 10 done, or is this an extravagant, something not perfected?
 11 **THE WITNESS:** I don't know if it's commonly practiced.
 12 It's obviously done on an as-needed basis.
 13 **COMMISSIONER KOLBECK:** Okay. So I guess common would
 14 be that not a lot of spills of contaminated drinking water.
 15 **THE WITNESS:** Correct. And the technology exists to
 16 implement those systems on an as-needed basis very quickly.
 17 **COMMISSIONER KOLBECK:** Other three spills on your
 18 resume, were they remediated? Referring to Mr. Tobin's
 19 question, those three spills, were all three of those
 20 remediated?
 21 **THE WITNESS:** Yes, they were.
 22 **COMMISSIONER KOLBECK:** And did human life and wildlife
 23 continue normally after that?
 24 **THE WITNESS:** I believe they did in all instances,
 25 yes.

1 COMMISSIONER KOLBECK: Was drinking water affected in
 2 any of them?
 3 THE WITNESS: No, it was not.
 4 COMMISSIONER KOLBECK: Is there a federal law
 5 pertaining to response time?
 6 THE WITNESS: Yes, there is.
 7 COMMISSIONER KOLBECK: And in a reasonable time that
 8 you had talked about could the company use helicopters or jet
 9 planes or anything regularly available to them?
 10 THE WITNESS: Correct. All resources necessary would
 11 be used, I would imagine, by the pipeline company to address the
 12 circumstances of the incident.
 13 COMMISSIONER KOLBECK: So is this common or
 14 uncommon --
 15 THE WITNESS: It's very common.
 16 COMMISSIONER KOLBECK: -- to use something other than
 17 ground transportation?
 18 THE WITNESS: That's correct. Especially in those
 19 cases where aerial surveys or reconnaissance is needed
 20 downstream for the purposes of directing resources, fixed wing
 21 aircraft helicopters have been used. I've personally been
 22 involved in those.
 23 COMMISSIONER KOLBECK: Okay. All right. Thank you.
 24 MR. SMITH: Additional Commissioner questions? Seeing
 25 none, Mr. White -- or wait a minute.

1 Ms. Semmler, do you have redirect? I apologize.
 2 MS. SEMMLER: I do.
 3 REDIRECT EXAMINATION
 4 BY MS. SEMMLER:
 5 Q. Based on Mr. Murdock's testimony we heard a bit ago, does
 6 the HCA planning component of this whole project take into
 7 account alternative drinking supplies and also plan to protect
 8 those source waters?
 9 A. I believe it does, yes.
 10 Q. Beings the PUC is not the jurisdictional body that's
 11 ultimately going to improve an integrity management plan or an
 12 emergency response plan, is your suggestion that those plans be
 13 submitted to the PUC at varies times -- be that the PUC monitor
 14 the process of how it all ends up being a final plan?
 15 A. That's correct. The level of relevance there speaks to the
 16 quality and quantity of the content of those documents.
 17 Q. The intent is then that the PUC dictate specific elements
 18 of that?
 19 A. That's correct.
 20 Q. A general monitoring?
 21 A. That's correct.
 22 MS. SEMMLER: Thank you.
 23 MR. SMITH: Now Mr. White.
 24
 25

1 RECROSS-EXAMINATION
 2 BY MR. WHITE:
 3 Q. I believe in your discussion with Mr. Hohn he was asking
 4 you about potential remediation areas in what appeared to be a
 5 wet area.
 6 Do you recall that testimony?
 7 A. I do.
 8 Q. And you suggested that one potential remediation measure
 9 might be an underflow dam?
 10 A. That's correct.
 11 Q. And I believe your testimony was that it would be possible
 12 that VOCs might potentially flow under that underflow dam?
 13 A. Would be conveyed through the culvert pipe that would be
 14 established as part of that construction, yes.
 15 Q. Okay. And as those VOCs then continued on downstream would
 16 they be likely subject to evaporation?
 17 A. They would be. And, if I may, there's one other technique
 18 that I've been involved with that could be employed. The use of
 19 air bubbling systems to facilitate or expedite the
 20 volatilization of VOCs.
 21 Q. So their susceptibility to evaporation then is, I guess,
 22 potentially the reason they're known as volatile organic
 23 compounds?
 24 A. That's correct.
 25 MR. WHITE: Thank you.

1 MR. SMITH: Mr. Tobin.
 2 RECROSS-EXAMINATION
 3 BY MR. TOBIN:
 4 Q. In discussing the alternate drinking water sources -- and I
 5 guess it's not just drinking water but household or sources
 6 necessary for household uses, you've stated that you don't have
 7 a concern about alternate sources' availability.
 8 Explain that to me, why that isn't a concern.
 9 A. In the instances that I've been involved with, one in
 10 particular was the impact of a community water supply as a
 11 result of a release of petroleum product I believe from an
 12 underground storage tank.
 13 Again, in that instance the water supply was maintained.
 14 The water was then purified through the use of a water
 15 purification system.
 16 In another case there was the need for a water supply from
 17 an outside source to be brought in, in this case bottled water,
 18 to be made available to the residents of a community.
 19 Q. Is it feasible to use bottled water for bathing and other
 20 type uses of water other than just drinking?
 21 A. It may or may not. And, again, a little bit out of my area
 22 of expertise.
 23 Q. Understand. To your knowledge does the CFR regulate the
 24 coordination of the annual response training? And, I mean, does
 25 it provide guidance as far as whether it's TransCanada that

1 dictates when that annual training will occur or whether there's
 2 local involvement in setting those dates?
 3 **A.** I'm sorry. I don't understand.
 4 **Q.** Do you have knowledge of whether the CFR dictates or
 5 provides guidance for how the annual response training occurs,
 6 the logistics of it?
 7 **A.** The mechanism, no, I don't believe is specified in the
 8 regulations.
 9 **Q.** Would it be your opinion that it would be critical for
 10 success that TransCanada coordinate those annual meetings for
 11 convenience of those participants so that for attendance --
 12 **A.** Yes, it would.
 13 **Q.** Would it be, in your opinion, appropriate to allow first
 14 responders to request either specialized or nonannual training
 15 if the circumstances dictate, for instance, a significant
 16 turnover in staff?
 17 **A.** Yes, it would.
 18 **Q.** With regard to the testimony regarding response equipment,
 19 is it your testimony that every piece of response equipment that
 20 may be necessary is transportable by air to the location if it's
 21 remote?
 22 **A.** No. I don't.
 23 MR. TOBIN: Thank you.
 24 MR. SMITH: Any questions, Mr. Hohn?
 25 MR. HOHN: Yes. Thank you.

1 RECROSS-EXAMINATION
 2 BY MR. HOHN:
 3 **Q.** You listed a number of spills that were involved in your
 4 resume. Could you tell us what the name of the town was, the
 5 town water supply that was affected, the incident you mentioned?
 6 **MS. SEMMLER:** I object. Irrelevant. We don't need to
 7 know the town water supply's name. It has nothing to do with
 8 the crude oil pipeline, Mr. Smith, we're discussing here today.
 9 **THE WITNESS:** I can answer that if you'd like.
 10 **MR. SMITH:** You may answer.
 11 **A.** But, again, that particular instance was not the result of
 12 a pipeline release. It was an underground storage tank release.
 13 **Q.** Go ahead.
 14 **A.** Hitterdal, Minnesota.
 15 **Q.** What was the product spilled from the tank?
 16 **A.** It was a petroleum product. I don't know exactly what it
 17 was.
 18 **Q.** Okay. You mentioned that granular-activated carbon could
 19 be used to treat water to make it available for drinking water
 20 supply.
 21 I assume you're referring to a package plant that might be
 22 brought in?
 23 **A.** That's correct. The systems that I'm familiar with can be
 24 fairly large scale. In the case of Hitterdal, Minnesota a
 25 system was constructed to treat the entire community drinking

1 water system. In other instances these granular-activated
 2 carbon systems are installed right in the house itself, in the
 3 homes.
 4 **Q.** Okay. And do you know, does that type of treatment,
 5 granular-activated carbon, will that take out benzene, toluene,
 6 and xylene, the BTEX?
 7 **A.** It will. There's a model process in which the influent
 8 water going into the system, the concentration of the influent
 9 water is determined. The capacity of the water treatment system
 10 is then determined, and there are a series of sample ports on
 11 that system in which samples are collected to ensure the water
 12 leaving the treatment system is indeed purified to drinking
 13 water standards.
 14 **Q.** So when you say drinking water standards you're referring
 15 to the maximum contaminant level, not to exceed the maximum
 16 contaminant level?
 17 **A.** If the maximum contaminant level, if that indeed references
 18 a municipal source, that would be for municipal purposes. For
 19 individual drinking water system, private well, I believe there
 20 are different standards that apply.
 21 **Q.** So let me see if I understand what you're saying. It would
 22 remove -- it would treat it and remove the objectionable
 23 elements at least to meet the federal water quality standards?
 24 **A.** The standards that would apply for that particular system.
 25 **Q.** Private, home or community --

1 **A.** Yes.
 2 **Q.** It may not remove all of the material, but it would remove
 3 enough to get it down to that level. Is that what you're
 4 saying?
 5 **A.** Correct.
 6 **Q.** Okay. We're in -- this project, as you know, looking at
 7 the map and listening to just testimony is in a rural area.
 8 What would be the mechanism for treatment of water that might be
 9 used at a feedlot with 500 head of cattle?
 10 How would you see that being approached?
 11 **A.** I guess I can't speak to that. I'm not familiar enough
 12 with the logistical issues to propose a specific type of system.
 13 **Q.** Based on your understanding of the CFR and the
 14 requirements, if there were a spill and it was confirmed that it
 15 was impacting a farm well, a rural well used for livestock
 16 purposes, would the applicant be required to treat that water to
 17 meet the use?
 18 **A.** I believe so. It would likely be a requirement imposed
 19 upon the operator by either the state environmental regulatory
 20 agency or the State Health Department.
 21 **Q.** Okay. One last question. Regarding the air bubbling
 22 treatment you mentioned to try to help speed up or accelerate
 23 evaporation of the benzene, toluene, and xylene, does the
 24 evaporation rate change between, say, winter and summer?
 25 **A.** I believe so. It is somewhat dependant upon the water and

1 the air temperature.

2 MR. HOHN: Thank you.

3 MR. SMITH: Any last Commissioner questions? Thank

4 you, Mr. Hannan. You may step down. It's a very low step.

5 (The witness is excused).

6 (Discussion off the record)

7 MR. SMITH: Ms. Semmler, you may call your next

8 witness.

9 MS. SEMMLER: Staff calls Mr. Muehlhausen to the

10 stand.

11 (The witness is sworn by the court reporter)

12 DIRECT EXAMINATION

13 BY MS. SEMMLER:

14 Q. Mr. Muehlhausen, could you please state your name, business

15 address, and employer for the record.

16 A. John Muehlhausen, 615 First Avenue Northeast, Minneapolis,

17 Minnesota. And I'm employed by Merjent, Incorporated.

18 Q. Please state your educational background.

19 A. I have a Bachelor of Arts in anthropology from the

20 University of Wisconsin-Madison.

21 Q. And your work experience since the time of obtaining that

22 degree.

23 A. I have almost continuously worked as a consultant to the

24 pipeline industry since graduating college in 1991. I've

25 consulted with both on the industry side and the agency side.

1 From 1991 to 1993 I worked at IMA in Minneapolis, Minnesota

2 doing environmental-related field work, mostly for pipelines.

3 From 1993 to 2004 I worked at Natural Resource Group in

4 Minneapolis, Minnesota. Natural Resource Group was an

5 environmental consulting company specializing in the pipeline

6 industry. I was branch manager for Natural Resource Group's

7 Denver office before starting Merjent in 2004.

8 From 2004 to the present I've been working at Merjent, also

9 an environmental consulting company, specializing in the

10 pipeline industry.

11 Q. And Merjent was employed by the Commission to consult with

12 staff in this case; is that correct?

13 A. Yes.

14 Q. Can you tell us generally what you reviewed or analyzed to

15 file your prefiled testimony, to write a report and to testify

16 here today?

17 A. Yes. I reviewed a great number of documents to prepare the

18 socio-economic analysis for this project. These included the

19 PUC's public comment transcript from the public hearings in

20 June. I reviewed Keystone's Application to the PUC. I reviewed

21 their Application to the Department of State. I reviewed the

22 Department of State's EIS. I reviewed some of the audio files

23 from the testimony last week. And many other documents, a large

24 number of which are referenced in my analysis report.

25 In that report I listed 57 publications and data sources.

1 Many of these publications and data sources came from

2 South Dakota State agencies, including the Department of Revenue

3 & Regulation, Department of Transportation, Office of Tourism,

4 Department of Labor.

5 Many of the data sources and publications were from federal

6 agencies such as the Census Bureau, the Department of Labor,

7 Department of Commerce, Department of Agriculture, Department of

8 Justice.

9 Staff in my office also called County Commissioner offices

10 in each county in an attempt to gather information regarding

11 County Commissioners' specific concerns.

12 MR. SMITH: One second before your next question.

13 Mr. Muehlhausen, could you please maybe tip the mic down a

14 little bit and move it a little closer to you. It's coming

15 across kind of faint over our system there. Thank you.

16 THE WITNESS: Is that better?

17 MR. SMITH: That's a lot better.

18 Q. And if there was any missing information or information you

19 needed in addition, did you make such data requests to a

20 particular party?

21 A. Yes.

22 Q. And who would that party be?

23 A. TransCanada.

24 Q. And did they respond in a timely fashion?

25 A. Yes.

1 Q. You'll see in front of you what's been marked as Staff

2 Exhibit 5. Is that your prefiled direct testimony?

3 A. Yes.

4 Q. Do you have any additions, corrections, or edits to make to

5 that testimony?

6 A. No. However, I would like to say that much of the data

7 provided in my testimony is time sensitive, meaning that it will

8 change over time.

9 For example, data regarding population, data regarding

10 hotel rooms' availability, economic multiplier. All of those

11 types of things do change over time. My testimony was based on

12 the best readily available information at my disposal. It

13 should still be valid.

14 However, if project details such as the cost of

15 construction, the number of spreads, the construction work

16 force, estimated number of workers, if those types of things

17 change, then my analysis would also change. And it's my

18 understanding that construction costs in South Dakota are now

19 estimated at around \$500 million as opposed to \$300 million on

20 which my report was based.

21 This would change portions of my analysis. I don't know

22 that there's a lot of value in recalculating all the numbers in

23 the report, given that these estimates may still again change in

24 the near future.

25 Q. You'll see in front of you what's been marked as Staff

1 Exhibit 6. Is that the report that you created?
 2 A. Yes.
 3 Q. You'll also see in front of you what's been marked as Staff
 4 Exhibit 13 and 14. Are those two submissions of surrebuttal?
 5 A. Yes.
 6 MS. SEMMLER: I would like to offer Staff Exhibit 5,
 7 6, 13, and 14.
 8 MR. KOENECKE: No objection.
 9 MR. TOBIN: No objection.
 10 MR. HOHN: No objection.
 11 MR. SMITH: Okay. Staff's 5, 6, 13, and 14 are
 12 received.
 13 CHAIRMAN JOHNSON: 5's the direct. 6 is the report
 14 itself? Okay. Thanks.
 15 Q. With those exhibits now being put into the record can you
 16 give us just a brief summary of the contents of your prefiled
 17 testimony and any aspects of that report?
 18 A. Yeah. And I'll try to keep it brief. I did cover a lot of
 19 subject matter so I'm going to just very briefly summarize it.
 20 Regarding the socio-economic impacts, I would generally
 21 categorize them into three groups: One group of resources that
 22 would not be impacted or would not be significantly impacted by
 23 the project; a group of resources that would be beneficially
 24 impacted by the project; and then a group of resources that may
 25 be adversely impacted by the project, if not properly mitigated.

1 Those resources that would fall into the first group that
 2 would not be impacted or would not be significantly impacted
 3 would be population, agricultural activities, tourism, housing,
 4 schools, law enforcement, and health care.
 5 Those activities or resources, rather, that would be
 6 beneficially impacted might include overall regional economic
 7 output, earnings, employment, and tax revenue.
 8 Those resources that could be impacted negatively if not
 9 properly mitigated might include one tourist activity that I was
 10 able to identify, potentially the State Fair, residential areas,
 11 as well as roads.
 12 As far as the socio-economic impacts goes, that just very
 13 broadly summarizes my conclusions regarding the project. I did
 14 provide some surrebuttal testimony in a couple of instances.
 15 One of them was regarding some Curt Hohn -- testimony provided
 16 by Curt Hohn that the project has potential to cause
 17 irreversible long-term damage to native grasslands in every
 18 county crossed.
 19 I do have a background in general environmental impacts on
 20 pipeline construction as well as the socio-economic aspects.
 21 And it's true grassland and prairies are considered one of the
 22 most threatened vegetative communities in the United States.
 23 Most of the grasslands have been lost due to agriculture,
 24 urbanization, mineral exploration, and in some cases just by
 25 invasion of noxious weed species.

1 According to the EIS prepared by the Department of State,
 2 about 29 miles of native prairie and grassland could be impacted
 3 by this project. The EIS actually describes the pipeline
 4 impacts on native prairie as irreversible, primarily because of
 5 destruction of the sod layer during trenching that would take
 6 more than a century to recover.
 7 As with other issues, there are varying opinions on the
 8 nature, degree, and significance of pipeline impacts on native
 9 prairie. In my testimony I actually provided a number of
 10 different environmental assessments that identified impacts from
 11 pipeline construction on native prairie as either being
 12 short-term, around 3 years or less, to longer term, about
 13 20 years.
 14 In my opinion the impacts on native prairie are probably
 15 long-term. However, with that said, prairie grass would begin
 16 to grow even within the first season following construction and
 17 would start establishing habitat suitable for wildlife and
 18 livestock. Fully functional prairie vegetative cover would
 19 probably become established 3 to 7 years following construction.
 20 However, that doesn't necessarily mean species' diversity, soil
 21 sod conditions would be reestablished. They could take several
 22 more years.
 23 I also commented on Curt Hohn's testimony that the pipeline
 24 would impact Dakota Skipper, which is a butterfly, and the
 25 Western Prairie Fringed Orchid, which, of course, is a flower or

1 plant. Both of these species -- well, one of the species is a
 2 federally listed species, and the other species is a candidate
 3 for listing, which means both of those species are protected
 4 under federal law.
 5 The bottom line is that the Department of State is required
 6 by law to consult with the U.S. Fish and Wildlife Service, and
 7 through that consultation process it seems very unlikely that
 8 the proposed project would be allowed to jeopardize the
 9 continued existence of the orchid or the butterfly or result in
 10 destruction or adverse modification of its designated critical
 11 habitat.
 12 I did provide, additionally, some testimony regarding some
 13 of Buster Gray's rebuttal. One of those was regarding assessing
 14 crop productivity following construction. And I stated that I
 15 do not necessarily agree that the best party to monitor and
 16 assess crop productivity would be the landowner. Although, in
 17 some cases it, in fact, might be.
 18 The real issue associated with crop monitoring centers
 19 around -- in my opinion, centers around the passive nature of
 20 TransCanada's proposal, which would require monitoring only when
 21 requested by the landowner. And essentially that shifts part of
 22 the responsibility of returning fields to preconstruction
 23 condition onto the landowner to identify a problem and bring
 24 that up to TransCanada.
 25 And that -- and that really concludes my summary of the

1 testimony.

2 **Q.** Based on that summary then, do you have any recommendations

3 to make?

4 **A.** You know, I did come up with several recommendations that I

5 felt could mitigate some of the issues that were raised. And

6 I'm just going to go over them briefly. I'm not going to state

7 them verbatim. They're verbatim in the written testimony.

8 One of them was that TransCanada monitor the yield of

9 agricultural lands except where waived by a landowner. There

10 are reasonable alternatives to this also, such as maybe instead

11 of that which could be considered I think relatively burdensome

12 to carry out, expensive and time-consuming, that at a minimum

13 they could send a letter to the landowners of agricultural land

14 reminding them of their right to request monitoring if they felt

15 there was an issue.

16 I suggested that TransCanada could try to coordinate

17 project activities with the State Fair administrators. I also

18 suggested that they could prepare and submit to the PUC a plan

19 to minimize impacts on residential areas. I suggested that they

20 could coordinate road closures with emergency response

21 officials, implement a program of road maintenance and repair to

22 keep roads in acceptable condition for travel by the public

23 during construction, after construction restore them to their

24 preconstruction condition. Protect paved road surfaces where

25 tracked vehicles are crossing roads and to use matting and stone

1 access pads to prevent tracking of mud on roads creating

2 dangerous conditions. I suggested that in accordance with state

3 law that they provide a bond to ensure that road repair would be

4 adequately compensated.

5 And, finally, I suggested a number of measures regarding

6 prairie mitigation. One of these was regarding potentially --

7 conducting fall construction. And I know there's some concern

8 with the fact that there are actually -- this 29 miles of

9 prairie is not all in one spot. It's scattered into I think 28

10 or 30 different locations. Much smaller segments.

11 This creates a logistical problem obviously during

12 construction having to skip over these places and go back and

13 can become very expensive.

14 One option that I did look at in a little bit more detail

15 was grouping these areas into larger skips and only including

16 those larger areas that had potential to have high-quality

17 prairie habitat and came up with five general areas.

18 Another option that I think is a really good idea and have

19 seen work successfully is to actually harvest the seed source

20 from the right of way prior to construction and use that for

21 restoration if it's properly stored and applied after

22 construction. That can help ensure species' diversity so that

23 your seed composition is similar to preconstruction.

24 **Q.** Did you hear Mr. Chris Hastings' testimony last week? I

25 think he was concerned by your word choice of insignificant

1 impact to agricultural land. If you heard that testimony, can

2 you please comment on his concern?

3 **A.** Yeah. And the use of the term significant and

4 insignificant is no way intended to diminish an individual's

5 sort of perception or experience. But in environmental science

6 the term "significant" and "insignificant" have very special

7 meaning. And it's derived from the National Environmental

8 Policy Act.

9 It's a very common term used by environmental scientists.

10 We intentionally do not use other words because these are the

11 words that are required frequently by NEPA review.

12 The term "significant" actually has some guidelines on its

13 use in the National Environmental Policy Act. And it requires

14 that we look at context and intensity. So in terms of context

15 that means if we have a regional project, we have to look at it

16 on a regional basis. We don't necessarily just look at it on an

17 individual basis.

18 Now that was the context in which I had made a

19 determination that the impacts were not significant. Of course,

20 we need to look at intensity, which just means generally the

21 magnitude of the impact as well beyond that region.

22 **Q.** That word choice did not in any way, shape, or form mean

23 unimportant?

24 **A.** No. Not unimportant.

25 **Q.** Mr. Hastings also spoke to his concern that the landowner

1 may not have the expertise to assess the crop productivity. Can

2 you comment on that statement in your testimony?

3 **A.** Yeah. Again, my intention wasn't to maybe offend people

4 that felt like they could. My statement was that in not -- you

5 know, the landowner may in some cases be the best person to

6 assess productivity.

7 But in my experience agricultural landowners frequently

8 prefer to have a professional agronomist develop a sampling

9 method and methodology to conduct the sampling to document the

10 sampling and to prepare the report. It's not in all cases a

11 small undertaking.

12 **Q.** And, finally, Mr. Hastings was concerned with problems in

13 prairie restoration due to weed infestation. Can you comment as

14 to that concern?

15 **A.** Yes, I can. And weeds are a very serious problem. And

16 over the last 10 years or so they've gained significant traction

17 in terms of attention from regulators.

18 However, TransCanada does have weed mitigation proposed in

19 its construction and reclamation plan. And I felt in reviewing

20 that weed mitigation they have one statement in there, and I'm

21 going to paraphrase it here, something to the effect that

22 "nuisance vegetation would be considered in determining whether

23 or not restoration is successful." In other words, that the

24 right of way would need to look similar to undisturbed areas in

25 terms of nuisance vegetation.

1 And I felt that was sufficient, that requirement to do that
2 in addressing weed issues.

3 MS. SEMMLER: I have nothing further. And
4 Mr. Muehlhausen is available for cross-examination.

5 MR. SMITH: Mr. Koenecke. Mr. White.

6 MR. KOENECKE: It's me this time. Thanks, Mr. Smith.

7 CROSS-EXAMINATION

8 BY MR. KOENECKE :

9 Q. Good morning, Mr. Muehlhausen.

10 A. Good morning.

11 Q. Have you got your testimony there in front of you?

12 A. Yes.

13 Q. I'll back up to page 7 of your direct testimony. Do you
14 see at page 9 where you discuss impacts of construction on
15 residences?

16 A. Yes.

17 Q. Do you have a distance in mind within which you're
18 considering impacts of construction on residents? I mean,
19 distance of construction?

20 A. Typically it's a case-by-case basis, that no two instances
21 are necessarily exactly the same. For example, some residential
22 lots may be bigger than other residential lots, but when you're
23 crossing a resident's property that's, say, maintained as a yard
24 or has play areas on it for its children or whatnot, that that
25 needs to be looked at as residential construction.

1 I know in some cases rural yards tend to be much bigger
2 than urban yards. And I did not have a specific distance in
3 mind, except that it just needs some consideration on a
4 case-by-case basis.

5 Q. So it's certainly your testimony that site-specific plans
6 with respect to residents would be satisfactory?

7 A. Yes.

8 Q. Are you aware that the FERC guideline for construction
9 plans on residences is within 50 feet of the right of way?

10 A. Yes.

11 Q. So you're asking the Commission to consider conditions
12 outside and further than 50 feet away?

13 A. I don't believe you asked me if I agreed that site-specific
14 plans would be okay. I don't think I ever recommended preparing
15 site-specific plans.

16 Q. But the question -- are you telling us that outside of
17 50 feet should be considered or not?

18 A. If you want to prepare a site-specific plan outside of
19 50 feet, I think that's fine. I guess I don't understand.

20 Q. I'm interested in your position on -- you talked about
21 large yards, and then I asked you if you were aware that FERC
22 only recommended 50 feet. And then my question past that was
23 you are recommending outside of the 50 feet that FERC would
24 recommend in its --

25 A. I'm not recommending that site-specific plans be prepared.

1 I have some mitigation measures in residential areas.

2 The FERC doesn't specify what a residential area is. They
3 require if you're within 50 feet of a residence, that you
4 prepare a site-specific plan. That doesn't mean that that
5 defines what the residential area is.

6 Q. So, I'm sorry, Mr. Muehlhausen, if I've confused you, or
7 perhaps I'm the one who's confused.

8 As I read your testimony or heard you answer my question,
9 we talked about impacts of construction on residences. And
10 didn't I ask you if you'd recommend or agree with me that a
11 site-specific plan would be --

12 A. Sure. Yeah.

13 Q. Let's move on for now, and perhaps we'll come back to that.

14 A. I'm sorry. I just -- maybe I'm confused a little bit.

15 Q. Well, if you are, I am too. So we'll perhaps -- like I
16 said, we'll come back to that.

17 Directing your attention to your testimony on crop
18 monitoring, it looks like it starts on page 1 of your first
19 surrebuttal testimony.

20 Do you have any methods in mind which you'd have the
21 Applicant monitor yields of agricultural fields?

22 A. Just that it would be a professional that would do it. I
23 don't have any specific plan, no.

24 Q. Can you tell me what you'd have the professional do?

25 A. Monitor the yield on the right of way and compare it to the

1 yield off the right of way.

2 Q. And wouldn't that require the professional to obtain yield
3 information from the landowner and perhaps from the -- a grain
4 terminal or some other place where grain was --

5 A. Not necessarily.

6 Q. So I'm interested in what you'd have that professional do
7 to monitor for that.

8 A. You know, I think that would be up to the professional to
9 determine. I'm not the person that would know the specifics of
10 that.

11 Q. Very well. In your testimony you listed that Keystone
12 should put roads back in their preconstruction or better
13 condition; is that correct?

14 A. Yes.

15 Q. I'm interested in what you mean by better condition. Do
16 you mean wider or thicker or --

17 A. No. What I've encountered in the past have been instances
18 where the contractor has been concerned that they've actually
19 improved the grade of the road and that, say, the county or
20 maybe in this specific case I'm thinking of the forest service
21 did not want it maintained at that level. So sometimes it's a
22 concern when you might improve it to a -- the preconstruction
23 condition only and that a contractor might be concerned if they
24 improved it to a better condition.

25 But I think in my estimation and discussions with the

1 county commissioners that that wouldn't necessarily be a
 2 problem. So if in repairing the road that it were returned to a
 3 better condition, that would be satisfactory.
 4 Q. Your discussions with county commissioners, what county
 5 commissioners?
 6 A. We talked with the Commission offices in every -- in every
 7 county. And we asked them questions about do you feel the roads
 8 are, you know, in good condition for the project, and they had
 9 responded yes, they're adequate, I guess.
 10 Q. So, if I understand correctly then, and I might not, is it
 11 your testimony that is if as a result of putting the roads back
 12 in condition postconstruction, that it was more economical to
 13 put them actually in a better condition, that that would be
 14 acceptable?
 15 A. Yes. The point was to -- if they were returned to a better
 16 condition, they wouldn't have to be disrepaired and returned to
 17 a lesser condition.
 18 Q. And if they're to be put in a better condition, then is it
 19 your recommendation that's the Applicant's option?
 20 A. Yeah. Yeah. It's -- at the same condition or better
 21 condition would be fine.
 22 Q. And you're not recommending that the county's townships be
 23 allowed to dictate the roads be put in better condition?
 24 A. No. No. Not whatsoever.
 25 Q. Okay. Thank you. I appreciate that. I'd like to direct

1 you to page 3 of your second surrebuttal testimony. Starting at
 2 the top you discuss in several places native prairie.
 3 Do you have a definition of native prairie in mind?
 4 A. Well, native prairie is generally considered to be the
 5 prairie that has not been disturbed, you know, over the past
 6 century or so by construction of roads, by urbanization, by
 7 agriculture, you know, that prairie is a subset of grassland
 8 biome in general, which means that it's mostly herbaceous, and
 9 prairie typically has just a wide variety and diversity of
 10 species.
 11 Q. So if I understand right, you would define prairie by its
 12 use and not necessarily by its composition, or would you use
 13 both of them?
 14 A. I would define it mostly by its composition. Now prairies
 15 can be used. For example, prairie is frequently used for
 16 grazing and pasture activities, which actually grazing in
 17 pasture is important to some extent in the preservation of
 18 prairie.
 19 Q. So if a native prairie had, say, 80 percent native species,
 20 would that be a sufficient definition?
 21 A. You know, I guess I wouldn't feel comfortable personally
 22 making a recommendation on 70 percent or 80 percent or some --
 23 you know, returning it to some percentage of native diversity.
 24 I think the intention is is to get the diversity the same
 25 as it is in adjacent off-right-of-way areas.

1 Q. And so if Keystone were to develop site-specific plans for
 2 native prairies which would be designed to return the land to
 3 that condition of the areas adjacent to the right of way, would
 4 that be sufficient?
 5 A. Absolutely. Yes.
 6 MR. KOENECKE: Nothing further. Except I guess I
 7 reserve the right to go back and figure out where you and I were
 8 miscommunicating previously but, thank you. I appreciate your
 9 testimony.
 10 THE WITNESS: Certainly.
 11 MR. SMITH: Do you have -- how long do you have, Rod?
 12 I'm thinking it's about maybe break time because I have a
 13 feeling he's going to be quite a while but --
 14 MR. TOBIN: I probably have maybe 8 to 10 questions.
 15 MR. SMITH: Should we take Rod's questions and then
 16 break for lunch? Is that okay?
 17 MR. TOBIN: Do you want to wait for
 18 Commissioner Kolbeck to return or --
 19 MR. SMITH: That's probably telling me it's time for a
 20 break.
 21 MS. SEMMLER: He can look through the transcript.
 22 MR. SMITH: He'll probably be right back. Under the
 23 APA, as you well know, he has the right and ability to read the
 24 transcript with me operating as a Hearing Examiner.
 25 MR. TOBIN: I understand. It was just a general

1 question.
 2 MR. SMITH: Go ahead and start, and we'll let him
 3 catch up when he gets back here.
 4 CROSS-EXAMINATION
 5 BY MR. TOBIN:
 6 Q. Good morning, Mr. Muehlhausen.
 7 A. Good morning.
 8 Q. The first area I want to refer you to is on page 7, line 15
 9 where it starts with your recommendation regarding what
 10 TransCanada prepared and submitted to the PUC.
 11 Item D on the next page at the top states that, Notifying
 12 affected residents in advance of any scheduled disruption of
 13 utilities. I don't see in here anywhere notification of those
 14 that provide the utilities, for instance, a water system.
 15 Would it be your opinion that you need to -- that would be
 16 encompassed in that recommendation by necessity?
 17 A. What I am recommending is that they notify the residents
 18 that if they need to disrupt their, say, electric supply or
 19 water supply, that they coordinate -- that they minimize the
 20 duration of that interruption to the smallest time possible and
 21 that they notify the residents of it prior to doing that.
 22 Q. In your recommendations can you see some benefit, though,
 23 to also notifying the provider to schedule and make that
 24 disruption as minimized as possible as opposed to just notifying
 25 with the landowner that it's going to happen?

- 1 **A.** Could you repeat that?
- 2 **Q.** I guess my question goes to those that provide the
- 3 utilities and in this specific instance let's say a water
- 4 system.
- 5 Those that provide the water, if your recommendation is
- 6 that TransCanada notify the customer -- but in your
- 7 recommendation -- or would it be out of line to include in your
- 8 recommendation notification to the provider of that service,
- 9 meaning the rural water system that, you know, okay, we're going
- 10 to the Smith house today or next week or next month and,
- 11 therefore, we need to plan a service interruption?
- 12 **A.** I guess I don't in the context that, you know, it's the
- 13 resident that's being inconvenienced.
- 14 **Q.** Okay. But if -- would it be your opinion that TransCanada
- 15 would be the party then turning off the water and cutting the
- 16 line and then restoring the water?
- 17 **A.** I don't know who would be doing it.
- 18 **Q.** Okay. With regards to page 13, line 3 is your discussion
- 19 of the road maintenance program which I've heard some reference
- 20 to already today.
- 21 Do you know if the federal regulations specify to what
- 22 degree the program of maintenance has to be maintained and what
- 23 will be triggering events to dictate maintenance?
- 24 **A.** I do not.
- 25 **Q.** Would you have recommendations on how that should occur?

- 1 **A.** No.
- 2 **Q.** In your opinion would it be unreasonable to as part of the
- 3 plan to include local input as to when a road is deteriorating
- 4 or below the condition in which it was in order to trigger some
- 5 of those maintenance events?
- 6 **A.** I would suspect that if the county road commission felt
- 7 that construction traffic were impacting their roads, that they
- 8 would notify the Applicant.
- 9 **Q.** I guess I'm more thinking postconstruction. As you know --
- 10 or maybe you don't know in this part of the world. I can't
- 11 remember where you said you were from. You said you live in
- 12 Minneapolis now so you're aware of the freeze/thaw cycles?
- 13 **A.** Yes.
- 14 **Q.** In this part of the world we have some pretty ugly
- 15 conditions in the spring when the frost comes out. And I'm
- 16 thinking more along the line of local input as far as when the
- 17 heaves occur and it may occur along that former trench as far as
- 18 the public input or the local input to request the maintenance
- 19 and --
- 20 **A.** Well, certainly any damage caused by, you know,
- 21 construction of the project is the responsibility of the
- 22 Applicant.
- 23 **Q.** But as far as a formal program of notification or
- 24 maintenance --
- 25 **A.** I guess I don't know that that would even be necessary.

- 1 **Q.** But it wouldn't in your opinion be unreasonable to mandate
- 2 local involvement in --
- 3 **A.** I guess I really don't have an opinion on it.
- 4 **Q.** Okay. Page 14, line 4 is your recommendation regarding the
- 5 bond amount. In light of the --
- 6 **A.** Yes.
- 7 **Q.** -- project cost escalation, are those -- and I know you
- 8 mentioned the lack of maybe necessity or appropriateness to
- 9 recalculate everything at this point in time. And I'm not
- 10 necessarily asking you to do that.
- 11 But would these numbers increase proportionately then to
- 12 the increase in the project cost?
- 13 **A.** I think it should be looked at again. I don't know that it
- 14 would be proportionate.
- 15 **Q.** Also on page 14 at line 14 you -- there's a sentence that
- 16 starts, Compared to statewide sales tax and use tax, and it
- 17 concludes at the end of the paragraph.
- 18 Could you explain that observation as far as the economic
- 19 impact and how the tax refund would affect South Dakota's
- 20 benefit from this?
- 21 **A.** Well, the tax refund affects -- effectively reduces the tax
- 22 benefit. So it would go from, I guess what would it be, roughly
- 23 6 percent based on the information that was available at this
- 24 time, down to 1.5 percent.
- 25 **Q.** In your first sentence it says, Compared to statewide sales

- 1 and use tax the proposed project would result in only a small
- 2 increase, about 2 percent in state revenues.
- 3 Where would that come from?
- 4 **A.** Well, that is from the sales and use and contractor's
- 5 excise tax.
- 6 **Q.** The contractor's excise tax?
- 7 **A.** Yes. And so -- yes.
- 8 **Q.** Am I correct in my reading of this, though, that that may
- 9 effectively be reduced -- or why don't you -- will that also be
- 10 reduced according to your analysis then?
- 11 **A.** That is what would be reduced.
- 12 **Q.** Okay. I just wanted to make sure I was reading that
- 13 correctly. And then on line 19 and 20 would you explain that
- 14 first sentence to me further.
- 15 **A.** Crude oil is not, well, at this time being delivered to the
- 16 state. And it's not being -- you know, crude oil that's being
- 17 shipped along the pipeline, this isn't an end use. This
- 18 location isn't an end use retail area.
- 19 Therefore, the crude oil being shipped in the state not
- 20 being retailed here wouldn't be subject to the sales and use or
- 21 the -- well, sales and use tax.
- 22 **Q.** So the actual flow of the oil itself, however many millions
- 23 of gallons or barrels of that per year it is, and forgive me for
- 24 not knowing the number off the top of my head, will not be
- 25 taxable, it is merely the construction of the line itself that

1 generates tax --

2 **A.** It's not subject to sales and use tax.

3 **Q.** Are you aware of any other South Dakota tax that it is

4 subject to?

5 **A.** Not the oil in the pipeline.

6 **Q.** Okay. That was my question.

7 **A.** All right.

8 **Q.** Okay. I'm going to refer now to your socio-economic

9 assessment. On page 39 there's this section entitled taxes.

10 The third paragraph down, the second sentence of that paragraph

11 states that, TransCanada estimates the taxable value of the

12 project in South Dakota at 300 million.

13 I understand that number may have changed now, but could

14 you give me the basis of where they came up with that number?

15 **A.** You would have to ask TransCanada.

16 **Q.** That wasn't provided to you?

17 **A.** I did not ask for it.

18 **Q.** Then on to page 40 in that same section in the middle of

19 the page after the bullet pointed items as a paragraph, the

20 second to the last sentence states, Compared to statewide taxes

21 collected in '06 of about 926 million, the proposed project

22 would have a minor benefit on tax revenues of about .5 percent.

23 In light of the change in the project costs that we're

24 anticipating, does that number -- that percentage stay

25 approximately the same in your opinion? Or does it actually

1 decrease now due to the relationship of that percentage to the

2 actual cost?

3 **A.** Well, the cost is going up so the percentage would go up.

4 **Q.** It would. Okay. That was my question. I wasn't quite

5 clear on that.

6 On page 41 under the same section, the third paragraph,

7 first sentence, there's an assumption on there regarding the

8 value of the pipeline being roughly equivalent to the cost of

9 construction?

10 **A.** Yes.

11 **Q.** Will that assumption remain the same no matter the cost of

12 the pipeline?

13 **A.** That I can't say. Typically when these types of reports

14 are prepared that is the baseline that we use for estimating.

15 **Q.** And as far as valuation methods, for instance, income or

16 replacement, those -- were any of those other factors considered

17 in determining the valuation of or the value of the line?

18 **A.** You would have to ask TransCanada.

19 **Q.** That information wasn't provided to you, or you were not --

20 **A.** I did not ask for it.

21 **Q.** Is it your understanding that the pipeline value will be

22 depreciated over time?

23 **A.** Yes.

24 **Q.** And because of the depreciation, will the assessment of it

25 then decrease over time?

1 **A.** That would be a logical conclusion.

2 **Q.** Have you been provided with or created a depreciation

3 schedule for the pipeline?

4 **A.** I don't recall being -- seeing one in the information I was

5 provided. I don't think I was. And I have not created one.

6 **Q.** I wouldn't have assumed so but -- in your opinion and

7 professional experience will the pipeline eventually be

8 depreciated to the point where no property tax will be paid?

9 **A.** That I don't know.

10 **Q.** On page 42 of the report is a table entitled Table 7. Do

11 you have any knowledge as to whether the information in Table 7

12 was reviewed by the South Dakota Department of Revenue and/or by

13 the assessor for the affected counties to determine the accuracy

14 of the numbers?

15 **A.** I did not provide it to them for their review. This was my

16 estimate. They I suppose could have obtained a copy of this.

17 **Q.** But to your knowledge --

18 **A.** To my knowledge.

19 **Q.** And you didn't provide it to them?

20 **A.** No.

21 **Q.** So do you have any opinion on how those numbers in that

22 table will change as the line is depreciated?

23 **A.** Well, as the line is depreciated -- well, first off, you

24 know, the Department of Revenue & Regulation in the counties

25 themselves decide how to value the asset. So assuming that they

1 decide to depreciate it, then the numbers would go down. That

2 is what we would expect to happen.

3 **Q.** And based on your previous experiences, do you have any --

4 can you provide any insight as to how that -- what kind of time

5 scale we're talking about or previous similar type pipelines in

6 this type of assessment situation?

7 **A.** You know, I really don't.

8 **Q.** Okay. Can you provide any information or insight as to

9 whether the amount of money received by school districts --

10 MS. SEMMLER: You know, I'm going to have to object to

11 the line of questioning. He's not a tax expert and has

12 indicated that he doesn't know the answers to these questions.

13 MR. SMITH: Again, I don't know if I heard the whole

14 question there, Rod. If he doesn't know, though -- he's been

15 pretty good at saying I don't know. Just say you don't know if

16 you don't know, and that's fine.

17 THE WITNESS: I will.

18 MR. SMITH: Okay. If he asks you things outside of

19 your expertise.

20 THE WITNESS: Yes.

21 MR. SMITH: We'd rather have you only testify to what

22 you know about.

23 **Q.** Again, the line of questioning is attempting to solicit

24 information regarding the economic impact.

25 MR. SMITH: Right. And so I guess I'm overruling to

1 that extent.

2 **Q.** Do you have any knowledge regarding the impact on school

3 funding as a result of the pipeline and the depreciation

4 thereof?

5 **A.** I don't.

6 **Q.** Do you have any knowledge or information as to how the

7 monies in Table 7 will actually end up or allocated to the

8 various state, county, or local agencies?

9 **A.** I do. I know that the monies will be collected by the

10 Department of Revenue & Regulation. From there they will be

11 given to the various counties based on their portion of the

12 asset that is in their county.

13 **Q.** Okay. Part of your testimony the discussion was on yield

14 data and the land and those kind of things. And I understand

15 that you're not a crop expert, but as part of your

16 recommendation would you include some recommendation that

17 unproductive or less productive fields be brought back up to a

18 level of production that they were at prior to the construction

19 of the pipeline, and if so, does that mean 100 percent or just

20 within a range?

21 **A.** It means -- I recommend that they be brought up to a yield

22 similar to off-right-of-way --

23 **Q.** Okay.

24 **A.** -- areas. So, for example, if the production -- assuming

25 that the construction right of way for whatever reason is

1 similar to the off-right-of-way areas, assuming you're going

2 through the middle of a field that if production increases in

3 those nonaffected areas, that we would expect production to

4 increase in the affected areas.

5 If production goes down in the unaffected areas, we would I

6 think consider it successful just as long as it's similar.

7 **Q.** Okay. So it's not a -- the recommendation isn't a

8 mechanism where you're actually trying to determine yield in the

9 pipeline trench prior to construction and then sample

10 afterwards. It would be a sampling of adjacent ground?

11 **A.** That's right.

12 **Q.** Okay. Regarding the benefits that you identified, three of

13 them I believe were earnings, employment, and revenue, do you

14 have any knowledge as to how many South Dakotans or the increase

15 in employment that may result as a result of the pipeline

16 construction?

17 **A.** Yes. It's outlined in the report.

18 **Q.** Could you discuss that a little bit for me as far as the

19 employment that will come from South Dakota versus out of state?

20 **A.** I can read it from the report.

21 MS. SEMMLER: Yeah. And I don't think we need to

22 repeat the report. If there's a specific question beyond the

23 report --

24 MR. SMITH: I have to agree with staff.

25 MR. TOBIN: I agree. I didn't want him to read it.

1 MS. SEMMLER: Do you have a specific question?

2 **Q.** In your opinion, will the number of South Dakotans employed

3 by the construction of the pipeline be a significant number?

4 **A.** It will be, I think, a small, localized, mostly temporary

5 benefit. I don't believe it will be a long-term or a

6 significant benefit. Primarily just during construction.

7 **Q.** I would have the same question then regarding the earnings

8 of South Dakotans.

9 **A.** Same response.

10 **Q.** And as far as state revenues from the construction of the

11 line in relation to the cost of construction as opposed to the

12 revenue of the state, meaning the relationship of the economic

13 benefit to the state versus the actual cost of construction of

14 the line, would you -- is that a -- is that significant in

15 relationship thereto?

16 **A.** I think I described it as not significant, although, you

17 know, somewhat beneficial. The cost of construction you're

18 referring to; right?

19 **Q.** Correct.

20 **A.** Okay.

21 MR. TOBIN: Thank you.

22 MR. SMITH: At this time we'll take our noon break and

23 reconvene at 1:15. We're in recess until 1:15.

24 (A lunch recess is taken)

25 MR. SMITH: The hearing in Docket HP07-001 is

1 reconvened following our noon recess. On the stand is

2 John Muehlhausen. Is that the correct pronunciation?

3 THE WITNESS: Yes.

4 MR. SMITH: And I think I had concluded Rod Tobin's

5 cross-examination. I kind of put the squeeze on you there. If

6 you have any additional questions, I'd certainly allow you to

7 proceed.

8 MR. TOBIN: I think anything additional I can do

9 later.

10 MR. SMITH: Mr. Hohn, questions for Mr. Muehlhausen?

11 CROSS-EXAMINATION

12 BY MR. HOHN:

13 **Q.** In your exchange with the Applicant's attorneys regarding

14 roads as good as or better than the original road, do you recall

15 that conversation?

16 **A.** Yes.

17 **Q.** If a township road had to be built up so that the project

18 could be constructed and it was left in better condition, that

19 would also be useful for emergency response, would it not, in

20 the future?

21 **A.** That seems logical.

22 **Q.** Okay. On page 1 of your testimony your degree is in

23 anthropology?

24 **A.** Yes.

25 **Q.** And could you summarize essentially what that studies?

1 **A.** Anthropology is the study of basically human behavior.
 2 There are a variety of -- it's a social science is what it is.
 3 And there are a variety of social sciences. We study culture,
 4 societies, and we study it through a variety of ways. It's
 5 actually a very broad field.
 6 It can include forensic anthropology, which is sort of
 7 pathology. It can include cultural anthropology, ethnography.
 8 It can include archeology. It can include in some cases
 9 linguistics. So it's just a very, very broad category of the
 10 study of human societies and cultures.
 11 **Q.** Okay. Thank you. On page 4, line 19, the proposed
 12 pipeline would affect approximately 2,169 acres of cropland. Is
 13 that referring to the easement area impact, page 4, line 19?
 14 **A.** Line 19?
 15 **Q.** Yes.
 16 **A.** That's referring to a number that I took I believe it was
 17 from the EIS in what they had determined the number of acres of
 18 cropland that would be affected in the state. It might have
 19 been from a different source. I don't recall the specific
 20 source. I did not calculate it.
 21 **Q.** But given the -- that number, is it fair to say that the --
 22 it's referring to the crop ground crossed by the pipe and not
 23 the adjacent property on either side?
 24 **A.** It would be the area affected, directly affected, by
 25 construction. It might include the construction right of way,

1 extra work spaces, things like that.
 2 **Q.** We had testimony from previous witnesses, farmers and
 3 landowners, saying that during construction some of their land
 4 might be isolated.
 5 This number would not take into account that isolated
 6 property, would it?
 7 **A.** My understanding of the number is that it would not take
 8 into -- that into account.
 9 **Q.** Okay. Thank you. On page 6 of your direct testimony,
 10 lines 15 and 16, do you see that there?
 11 **A.** Yep.
 12 **Q.** You're referring -- the river you're referring to in that
 13 sentence is the Missouri River; is that right?
 14 **A.** That's correct.
 15 **Q.** Did you take into account adverse impacts the project might
 16 have on the James River and associated recreation?
 17 **A.** No. The only -- the purpose of this discussion at the
 18 Missouri River is that it actually has a recreational -- an
 19 official recreational designation.
 20 **Q.** And by saying official recreational designation, that
 21 wouldn't diminish recreation on the James River in your opinion,
 22 would it?
 23 **A.** No.
 24 **Q.** Okay. On page 7, lines 6 through 7, referring to -- refers
 25 to commercial and industrial developed land.

1 Are you familiar with a reroute of the pipeline in the
 2 Yankton area near the Missouri River, the recent reroute?
 3 **A.** No, I'm not.
 4 **Q.** So if that reroute affected industrial, that wouldn't be
 5 reflected in this statement?
 6 **A.** You know, I based this analysis on the maps and information
 7 provided in the Application. If there has been subsequent
 8 routing or information provided since then, I haven't received
 9 it.
 10 **Q.** Okay. Thank you. Page 8, line 14 through 18 deals with
 11 compensation of landowners. The compensation you're referring
 12 to is for this pipe in this Application; is that right?
 13 **A.** The --
 14 **MS. SEMMLER:** I think the compensation to landowners
 15 if we're going to get specific is part of the Motion in Limine
 16 that was subject earlier.
 17 **MR. SMITH:** It is unless -- I mean, I'll overrule only
 18 to the extent that what you're getting at is general questions
 19 about the -- what this -- Mr. Muehlhausen's testimony is using
 20 as its assumptions.
 21 **MR. HOHN:** Yes. It's not as to specific. It's as to
 22 the general nature in this document.
 23 **MR. SMITH:** Okay. That's fine.
 24 **Q.** Your testimony here as to landowner compensation would
 25 not -- does not cover possible future pipes that might be put in

1 this corridor, does it?
 2 **A.** I don't know how TransCanada is negotiating their easement,
 3 if it's single line or multiple line so I can't answer that.
 4 **Q.** Well, one of the documents submitted as part of WEB's
 5 testimony is a copy of the first easement presented to
 6 landowners through the pipeline route area which made reference
 7 to one or more of the pipelines. And that easement has been
 8 secured, it's our understanding, from landowners.
 9 In the event -- in that event, would lines 14 through 17 be
 10 referring to compensation for one pipe or more pipes --
 11 **MS. SEMMLER:** I'll object. First of all, we don't
 12 know if our witness is familiar with that document. And,
 13 second, we're here in this hearing to look at the Application,
 14 and the Application as submitted by TransCanada is for one
 15 pipeline.
 16 **MR. SMITH:** Sustained.
 17 **MR. HOHN:** In his testimony at this hearing Mr. Jones
 18 said that if there was an opportunity to place two more pipes in
 19 this right of way, and he would like the opportunity, his
 20 company would, to be able to utilize that for two more pipes if
 21 the need arose.
 22 I would think that's foundation for this question
 23 then.
 24 **MS. SEMMLER:** Same objection. We don't know how
 25 familiar this witness is with that testimony, the easement

1 documents, and we are here examining the Application as
 2 submitted by TransCanada for one pipeline.
 3 MR. KOENECKE: Additionally, I think it's a
 4 misstatement of the record.
 5 MR. SMITH: Well, I think it is too. Besides that,
 6 we're not adjudicating, you know, individual land. You know, if
 7 TransCanada wants to buy their whole darn farm, they're
 8 perfectly free to do that. And to me it's just not what we're
 9 here about. We're here about this particular project, which is
 10 the pipeline.
 11 MR. HOHN: Okay. I'll move along.
 12 Q. Page 9, line 18 through 23 refers to law enforcement and
 13 anticipated needs once the construction is undertaken; is that
 14 right?
 15 A. Yes.
 16 Q. In making your -- you've gathered a lot of data, I assume,
 17 to research this section?
 18 A. Yes.
 19 Q. Did you look to information on this issue during the
 20 construction -- construction of other pipelines in the Midwest
 21 or in South Dakota?
 22 A. I did.
 23 Q. And did you look to the impacts to South Dakota during the
 24 construction of the Northern Border Pipeline?
 25 A. No.

1 Q. Page 14 of your testimony, lines 4 through 7 refers to two
 2 bonds, a \$3 million bond in 2008 and a \$12 million bond in 2009.
 3 Why is the number different for the two years?
 4 A. What page was that?
 5 Q. I'm showing page 14, unless I'm off. Page 14, and then
 6 lines 4 through 7. Do you see that?
 7 A. Yes.
 8 Q. Okay. Do you know why the difference in the bond might be
 9 between '08 and '09?
 10 A. I'm just trying to recall here. You know, off the top of
 11 my head I can't recall. I do remember that there was some logic
 12 to it. I would need to look into that.
 13 Q. Okay. Thank you. And based on your review of this, these
 14 bonds, would they cover township roads as well as county?
 15 A. This is a bond that is required by state law for the PUC.
 16 I am not exactly sure what it covers.
 17 Q. Okay. It references public roads, and the assumption would
 18 be that township and county would be public.
 19 A. Yeah.
 20 Q. You don't know for sure?
 21 A. I don't know, you know, exactly what it covers, no.
 22 Q. Fine. On page 14 again still, lines 13 through 14 make
 23 reference to the State collection of 18 million from
 24 construction in sales and excise tax.
 25 Was that based on \$300 million worth of construction or

1 500?
 2 A. 300.
 3 Q. Okay. Since you learned that the construction cost appears
 4 to -- the estimate appears to have been increased to 500, have
 5 you had an opportunity to recalculate that?
 6 MS. SEMMLER: I do believe the expert testified that
 7 he has not, and recalculation may not prove to be a benefit.
 8 MR. SMITH: I think this has all been asked and
 9 answered already, Curt.
 10 MR. HOHN: The answer is no, he hasn't calculated?
 11 MS. SEMMLER: It's been asked and answered. It will
 12 be in the record.
 13 MR. SMITH: Yes. That's what he said. It was gone
 14 over quite thoroughly.
 15 Q. So if I'm reading line 14 correct -- excuse me. Line 17
 16 and 18, TransCanada is eligible for a waiver of that tax.
 17 Are you aware of whether they've applied for that?
 18 A. I have no idea.
 19 Q. Okay. You may have stated this before, but I don't recall
 20 the answer -- this answer. Was the source of your information
 21 or was your information that you gathered reviewed with the
 22 Department of Revenue, the tax information?
 23 MS. SEMMLER: That was asked and answered, I believe.
 24 Q. Could you restate it for me?
 25 MR. SMITH: Go ahead and restate it. Yes, it was.

1 He's already answered that but --
 2 A. And I'm not sure exactly which information you're
 3 specifically referring to, but as far as I know, I did not --
 4 well, I know I did not provide this report to them. I don't
 5 know whether or not they've been interested in this proceeding
 6 and obtained a copy of it.
 7 Q. But you didn't -- you weren't in contact with them?
 8 A. No.
 9 Q. Okay. I'd like to turn to your report, the larger report,
 10 the socio-economic assessment, October 19.
 11 On page 14 you have a Table 5 showing economic impact. And
 12 on the top of that page would be page 14?
 13 MR. SMITH: Are you sure you've got the right page?
 14 Q. I must have an earlier report. Was this resubmitted?
 15 A. No. I don't know where you would have got a copy dated
 16 October 19, but that would be draft --
 17 MS. SEMMLER: Yeah. I was going to say our final
 18 version is October 29 is the one that's part of the record.
 19 MR. HOHN: I have 129 and 119, and I'm not sure how I
 20 got it. I would have got it off the website, I believe.
 21 MS. SEMMLER: I don't believe it's filed.
 22 MR. HOHN: Okay. So we should be referring to the
 23 29th. I'll correct myself here. Thank you.
 24 Q. On Table 5, which is on page 19, economic impact of the
 25 Keystone Pipeline Project, is TransCanada -- based on this

1 table, is TransCanada planning to spend 11 million annually in
 2 the project area? Is that what that's showing?
 3 **A.** This table does show what they're planning on spending
 4 annually on the project area.
 5 **Q.** Yeah. Apparently the 19th report, must have been a draft,
 6 showed 11 million was going to be spending annually, and it's
 7 not in the one that's been filed.
 8 **MS. SEMMLER:** I'll argue it's irrelevant. We filed --
 9 the final version is filed and part of the record. It is the
 10 exhibit we're looking at, and any draft is irrelevant regardless
 11 of how it was obtained, which I don't know.
 12 **MR. SMITH:** Yeah. I agree. That's not in the record
 13 anyway, not his testimony.
 14 **MR. HOHN:** We'll move along.
 15 **Q.** It's on page 17, second paragraph, referencing
 16 TransCanada's planning on spending about 11 million annually in
 17 the project area for operation of the pipeline.
 18 Do you see that?
 19 **A.** Uh-huh.
 20 **Q.** Where would that number have come from?
 21 **A.** From TransCanada in a data request.
 22 **Q.** And was it broken down as to where the 11 million --
 23 **A.** I did not ask them to break it down except into the way
 24 that I asked the questions was in terms of electricity and then
 25 everything else.

1 **Q.** And as shown in Table 4, the bulk of that 11 million would
 2 be the 10 million electricity; correct?
 3 **A.** That's correct.
 4 **Q.** Thanks. Did your socio-economic study look at or address
 5 the issue of the economic impact of a major spill?
 6 **A.** Not specifically, no.
 7 **Q.** And is it possible to estimate the economic impact of a
 8 major spill in a community or on the state?
 9 **A.** I suppose somebody could estimate that.
 10 **Q.** Were you asked to address that issue in your testimony?
 11 **A.** No. I wasn't specifically asked to.
 12 **Q.** Okay.
 13 **MR. HOHN:** I believe that's all the questions,
 14 Mr. Smith.
 15 **MR. SMITH:** Thank you. Commissioner questions.
 16 **CHAIRMAN JOHNSON:** Good afternoon, Mr. Muehlhausen.
 17 **THE WITNESS:** Good afternoon.
 18 **CHAIRMAN JOHNSON:** On page 25 of your report -- and
 19 I'm looking at the end of the second paragraph on page 25. You
 20 note that at least in one study there were findings that the
 21 location of a pipeline had no significant impact on the sales
 22 price or demand for properties located along that right of way.
 23 Is that a fair summary of that area?
 24 **THE WITNESS:** That's correct.
 25 **CHAIRMAN JOHNSON:** In your professional experience

1 have you come across studies that had a finding counter to that
 2 one?
 3 **THE WITNESS:** This is the only specific study that
 4 addresses pipeline impacts on home values that I'm aware of.
 5 **CHAIRMAN JOHNSON:** Did you review the methodologies
 6 used by the study at all?
 7 **THE WITNESS:** I did not specifically review the
 8 methodologies. I did obtain a copy of the study. And I
 9 disclosed in my report here the fact that it was prepared by the
 10 Interstate Natural Gas Association of America, which is an
 11 industry-side --
 12 **CHAIRMAN JOHNSON:** In your evaluation of this study
 13 did it appear -- did it appear that the methodologies were
 14 sound.
 15 **THE WITNESS:** Well, certainly, yes.
 16 **CHAIRMAN JOHNSON:** Okay. Similarly, I have similar
 17 questions with regard to -- well, on page 10 of your testimony I
 18 know you make reference to historical data and the negligible
 19 effect on local crime rates. And again that's a summary. If
 20 that's incorrect, please correct me.
 21 **THE WITNESS:** That's correct.
 22 **CHAIRMAN JOHNSON:** Or paraphrase, rather. That's a
 23 Department of Justice analysis.
 24 Have you encountered in your professional experience
 25 any studies or information, findings that were in contrary to

1 those listed?
 2 **THE WITNESS:** No. And actually the analysis was based
 3 on my obtaining raw data and taking a look at it from -- I
 4 obtained raw data from the Department of Justice and simply
 5 looked at the crime rate trends over those years in that -- for
 6 those counties directly affected by that project.
 7 **CHAIRMAN JOHNSON:** So I can presume then that you
 8 think the methodology was not only sound but brilliant?
 9 **THE WITNESS:** It absolutely was.
 10 **CHAIRMAN JOHNSON:** That's all I've got right now,
 11 Mr. Smith. Thank you.
 12 **MR. SMITH:** I forgot who it was over there. Oh, wait
 13 a minute. We've got to go back to staff. Pardon me.
 14 **Commissioner Kolbeck.**
 15 **COMMISSIONER KOLBECK:** Thank you for being here.
 16 Could you tell me the exact footage -- when you and Mr. Koenecke
 17 were jousting there I was still confused when the joust was over
 18 there.
 19 Could you tell me the exact footage for siting near
 20 homes that you're recommending?
 21 **THE WITNESS:** Okay. I'm not recommending a specific
 22 footage. And I want to apologize. I wasn't supposed to be sort
 23 of controversial or negative. I simply was having a hard time
 24 understanding.
 25 **COMMISSIONER KOLBECK:** He's kind of a softy. No

1 problem. There's really no --

2 THE WITNESS: That's correct. I think it needs to be

3 looked at on a site-specific case.

4 COMMISSIONER KOLBECK: Okay. Do I understand your

5 testimony that TransCanada would be in control of the quality of

6 the road restoration?

7 THE WITNESS: TransCanada would be required to ensure

8 that the roads would be restored to their preconstruction

9 condition.

10 COMMISSIONER KOLBECK: Okay.

11 THE WITNESS: Or better.

12 COMMISSIONER KOLBECK: And what role would you think

13 that the counties would play in that -- the highway

14 superintendent or the county superintendent?

15 THE WITNESS: Based on my experience, typically if

16 there's a problem, the county road commissions let them know.

17 In fact, frequently there's close coordination between pipeline

18 contractors and the road commissions because of permitting road

19 crossings and many other things and deterioration such as this.

20 And that is one of those processes that hasn't seemed

21 in my opinion to need formalization.

22 COMMISSIONER KOLBECK: The County Commission still

23 controls the roads, correct, and how they would be fixed?

24 THE WITNESS: That's correct.

25 COMMISSIONER KOLBECK: And according to the value on

1 the economic side of that, the value on the property taxes that

2 were being discussed, could you explain to me why my home taxes

3 always go up but yet your pipeline is actually on book value,

4 which is going down?

5 THE WITNESS: Yeah. Well, there's a couple of things

6 I want to say regarding this. One, I am not a tax expert so

7 this is pushing sort of the edge for me. And --

8 CHAIRMAN JOHNSON: And I do want to interrupt, and if

9 I'm wrong, please, somebody else correct me. But I think,

10 Commissioner, that may be an incorrect presumption.

11 I don't know that we have on the record information

12 that indicates the taxation on a pipeline is based on book value

13 as opposed to real value.

14 COMMISSIONER KOLBECK: No. Not book value but the

15 taxes are being figured accordingly more on a book value as

16 they're going down.

17 CHAIRMAN JOHNSON: I don't think that information

18 is --

19 COMMISSIONER KOLBECK: Valuation is going down whereas

20 some other properties that valuation goes up.

21 THE WITNESS: It may, in fact, not go down. It will

22 depend on your county commissioners and how they do value the

23 pipe. That is entirely up to them in accordance with state law.

24 COMMISSIONER KOLBECK: Okay. And then that valuation

25 may go up if the price of crude oil were to go up so that the

1 commodity or the pipe could be worth more or --

2 THE WITNESS: That I can't answer. I just don't know.

3 COMMISSIONER KOLBECK: So there's nothing definite on

4 taxation in the future. It could go either way. Is that what

5 you're saying?

6 Probably not a fair question after you said you're not

7 a tax expert.

8 THE WITNESS: So my understanding is is that it could.

9 COMMISSIONER KOLBECK: It could. Okay. That's all I

10 have.

11 MR. SMITH: Commissioner Hanson.

12 COMMISSIONER HANSON: Thank you, Mr. Smith. Good

13 afternoon, Mr. Muehlhausen.

14 THE WITNESS: Good afternoon.

15 COMMISSIONER HANSON: My questions are going to

16 confine themselves to just page 3 and 4 of your testimony, your

17 direct testimony.

18 On line 3 of page 4 you state that during operation of

19 the pipeline for every dollar spent in South Dakota by

20 TransCanada an additional 33 cents of indirect and induced

21 output would be expected in South Dakota.

22 That sort of flies in the face of a lot of statements

23 that are made by promoters of developments when they say that

24 there are -- the money will turn over six times or seven times,

25 things of that nature, and you start to smile when I say that.

1 You've obviously heard that before.

2 Can you balance where those two are? Is it -- well,

3 rather than me answering the question --

4 THE WITNESS: Yeah. Well, I'm not trying to promote

5 real estate to you. What we do when we do an input/output

6 analysis -- one of the things I try to do is keep it very

7 simple.

8 And one way to keep it very simple is to purchase

9 these multipliers. In other words, this would amount to a

10 multiplier of 1.3. We purchase them from the U.S. Bureau of

11 Economic Analysis.

12 This is a number that's specifically for the counties

13 crossed collectively added together that the Bureau of Economic

14 Analysis has said if you're going to increase demand for

15 pipeline transportation needs in the state, that this is what

16 your multiplier would be. So it's something that the Bureau of

17 Economic Analysis puts together and is not something that I put

18 together.

19 Does that answer your question?

20 COMMISSIONER HANSON: It tells me where you arrived at

21 your figures. Perhaps I need to find out where the other person

22 obtained their figures.

23 THE WITNESS: Right.

24 COMMISSIONER HANSON: As opposed to trying to figure

25 out how the two balance since you don't have any idea where

1 they're obtaining their numbers?
 2 THE WITNESS: Right. And generally the larger the
 3 area that you're looking at, the bigger your multiplier's going
 4 to be. The smaller the area you're looking at, the smaller your
 5 multiplier's going to be. And there are just a lot -- there are
 6 a variety of variables and factors that they consider when
 7 putting these multipliers together and it's a very complicated
 8 process that I personally could not do myself. But the fact
 9 that they're available from the Federal Government is a good
 10 thing that allows simpler economic analysis.
 11 COMMISSIONER HANSON: And one would assume at least a
 12 neutral third party as opposed to --
 13 THE WITNESS: Yes.
 14 COMMISSIONER HANSON: -- someone else coming up with a
 15 number. About midway on that page, page 4, on line 12 you speak
 16 of that during operations 61 direct and indirect jobs could be
 17 created. And over on page 3, line 16 you state that Keystone
 18 would hire three employees locally to support operation.
 19 Is the 61 number for the entire pipeline?
 20 THE WITNESS: That -- no. The 61 includes the three
 21 people plus an additional 58. They provide -- the Federal
 22 Government employs multipliers for employment also. But due to
 23 spending that \$11 million per year in South Dakota to operate
 24 the pipeline, mostly for electricity, but that's going to have
 25 what's called the ripple effect in the economy. It's going to

1 create jobs. So it's going to create an additional 58 jobs
 2 indirectly as a result of operating the pipeline.
 3 So Keystone is proposing to have three employees and
 4 then these indirect or induced jobs would result in, according
 5 to the multipliers, 58.
 6 COMMISSIONER HANSON: Thank you. And the -- I'm going
 7 to assume, and perhaps I shouldn't assume, that the multiplier
 8 takes into consideration the effect of the 11 million on how
 9 many direct and indirect and then how many direct and indirect,
 10 how many direct and indirect?
 11 THE WITNESS: That is exactly it. You've hit it on
 12 the nose. It is a sum of an infinite series.
 13 COMMISSIONER HANSON: Thank you. I understand the
 14 last -- almost understand the last sentence on page 4 that
 15 starts on line 14. I have a little challenge with the last part
 16 that states "and labor costs in the industries most affected by
 17 the project are less than one-third the revenues."
 18 Could you tell me what you -- could you clarify that
 19 for me?
 20 THE WITNESS: Sure. In trying to determine whether or
 21 not an economic impact has been official or not, you need to
 22 look at how much money it's bringing in and then subtract the
 23 cost of bringing that -- that -- you know, raising those
 24 revenues. So if your costs of obtaining those revenues exceed
 25 the actual revenues, that's a bad thing.

1 Labor is -- it's sort of the concept that profit is
 2 equal to revenues minus cost of goods sold, which would include
 3 labor minus overhead. And in that sense when you have lower
 4 labor costs they don't have as much potential to reduce sort of
 5 the earnings of those revenues. You have essentially I guess to
 6 put it sort of in lay terms more profit.
 7 COMMISSIONER HANSON: But when you speak to the labor
 8 costs are less than one-third of the revenues, revenues from
 9 where?
 10 THE WITNESS: Well, just revenues in the industry in
 11 general. The Federal Government tracks the revenues generated
 12 for just, you know, a variety of industries. Like you could go
 13 through the SIC codes or the NIASC codes I think they are, and
 14 they track income or revenues by all those. They track cost of
 15 labor.
 16 COMMISSIONER HANSON: Okay. Thank you. Do you know
 17 in your analysis of any adverse economic impact from this
 18 pipeline?
 19 THE WITNESS: I had mentioned --
 20 COMMISSIONER HANSON: Other than what you had gone
 21 over previously.
 22 THE WITNESS: No. Typically my experience has been in
 23 doing these types of analyses that the economic impacts are
 24 typically, you know, beneficial. And in a way it's one of the
 25 nicer things to study and do analyses on because you're not

1 always talking about negative impacts where, you know, with
 2 environmental issues and things like that.
 3 COMMISSIONER HANSON: Thank you very much. Appreciate
 4 your testimony.
 5 MR. SMITH: Commissioner Kolbeck, additional
 6 questions?
 7 COMMISSIONER KOLBECK: I'm sorry. I forgot one. On
 8 page 17 of your report -- not on your direct testimony but on
 9 your assessment, social and economic. That electricity, that
 10 10 million 100 that's stated there, are you familiar with the
 11 co-op model and how that works?
 12 THE WITNESS: In this state, no.
 13 COMMISSIONER KOLBECK: A cooperative.
 14 THE WITNESS: Well, I'm familiar with the model in
 15 general, yeah.
 16 COMMISSIONER KOLBECK: Were dividends through a co-op
 17 figured into the economic status?
 18 THE WITNESS: I did not do that, no.
 19 COMMISSIONER KOLBECK: Okay. Thank you.
 20 MR. SMITH: Mr. Koenecke? Wait a minute. Did I give
 21 staff a chance here? I've lost track. I'm sorry.
 22 MS. SEMMLER: No. That's fine.
 23 REDIRECT EXAMINATION
 24 BY MS. SEMMLER:
 25 Q. Aside from the clarification that you made that you are not

1 an account and you're not a tax attorney, did you have any other
 2 clarifications or corrections to make regarding statements you
 3 made previously on the record?
 4 **A.** Yeah. I was -- when -- I think it was Rodrick Tobin had
 5 asked me a question about the taxes. I actually misstated how
 6 the taxes, ad valorem taxes, are collected.
 7 And, you know, it's my understanding based on looking at
 8 Department of Revenue & Regulation publications that it's -- the
 9 pipeline will be valued, and then the taxes will be collected.
 10 It will be valued by the State for consistency, but the taxes
 11 actually are collected by the counties at a county level. And I
 12 think I may have said that backwards. I wasn't sure. But I
 13 wanted to clarify that.

14 MS. SEMMLER: I don't have anything further.

15 MR. SMITH: Mr. Koenecke.

16 MR. KOENECKE: Thank you, Mr. Smith.

17 The first thing I'd like to do is ask the
 18 Commission to take judicial notice of Chapter 10-37 of
 19 South Dakota Codified Laws entitled Taxation of Pipeline
 20 Companies.

21 MR. SMITH: We will certainly do that. It's the law.
 22 So we will attempt to pay attention to that.

23 RECROSS-EXAMINATION

24 BY MR. KOENECKE:

25 **Q.** Mr. Muehlhausen, did you consult Chapter 10-37 of the

1 South Dakota Code entitled Taxation of Pipeline Companies in the
 2 preparation of your reports?
 3 **A.** I didn't consult it, no.
 4 **Q.** Do you recall the questions you've been asked today about
 5 depreciation?
 6 **A.** Yeah.
 7 **Q.** I'd like to ask you about that. If you knew that the state
 8 law in this section of the code required the pipeline to be
 9 valued at fair market value, would that have an impact on your
 10 answers as to depreciation?
 11 **A.** Yes.
 12 **Q.** And if you knew that for the purpose of determining the
 13 fair market value of the property, the Department shall take
 14 into consideration the cost approach, the income approach, and
 15 the market approach to valuation, would that also have an effect
 16 on your opinion --
 17 **A.** Yes.
 18 **Q.** -- on depreciation?
 19 **A.** Yes, it would.
 20 **Q.** And would it still be your opinion or your thought that --
 21 testimony that depreciation would be a consideration in the
 22 valuation of the taxation of the pipeline?
 23 **A.** Could you repeat that?
 24 **Q.** Probably not. If you knew those two things, would you
 25 still -- would it still be your testimony that depreciation was

1 a factor in the property taxation of the pipeline?
 2 **A.** No.
 3 MR. KOENECKE: Thank you very much. That's all I
 4 have.
 5 MR. SMITH: Any last questions, Mr. Tobin?
 6 MR. TOBIN: Just a couple.
 7 MR. SMITH: Okay.

8 RECROSS-EXAMINATION

9 BY MR. TOBIN:

10 **Q.** With regard to the explanation you just gave regarding the
 11 58 jobs, I believe that came from page 4, line 12 of the
 12 testimony. And in light of the fact that 10 million \$100 of the
 13 operational money will come from basically utility or
 14 electricity, can you give an example of where you would
 15 anticipate that many jobs being created?
 16 **A.** Well, they could be created just in a variety of sectors.
 17 What the multipliers take into effect, these employment -- or
 18 take into consideration, rather, are everything from these
 19 utility companies needing to hire more people maybe to operate
 20 their utilities to the fact that those people now have more
 21 disposable income in the area and maybe say go out more -- the
 22 need for more jobs say through food service.
 23 It ripples through absolutely every sector and every
 24 industry. And if you -- there is a table in there, and I
 25 believe it's Table 5 in the report, that tells you by industry

1 how many jobs that the Bureau of Economic Analysis thinks would
 2 be created.
 3 **Q.** But it would be fair to say that those are estimates at
 4 best based on modeling data and in no way necessarily indicative
 5 of real world results?
 6 **A.** That is absolutely correct.
 7 **Q.** Thank you.
 8 MS. SEMMLER: I would object. The no way
 9 indicative --
 10 **A.** Let me correct that.
 11 MS. SEMMLER: I don't think --
 12 **A.** It's a model. It's an estimate. It -- you're absolutely
 13 correct in that it's an estimate, and it's a model. What it's
 14 not intended to represent is exactly what the future state
 15 holds. You're trying to predict the future. And what you're
 16 trying to do is predict it in an educated way based on past
 17 information. And that's what they gather. It's essentially
 18 actuarial science, I guess, if you will.
 19 **Q.** Thank you. On page 4, line 12, there was discussion -- I'm
 20 sorry. Page 4, line 3. I believe Commissioner Hanson discussed
 21 the additional indirect or induced output would be expected in
 22 South Dakota.
 23 Can you give me -- is that in the same vein as the jobs, or
 24 is that different when you talk about .33 dollars of indirect or
 25 induced output would be expected in South Dakota?

1 A. That's in the same vein. If I understand your question
 2 correctly, these multipliers, they provide for total output for
 3 earnings and for jobs, and they're essentially applied the same
 4 way.
 5 Q. So that \$.33 would be maybe in the form of salaries for
 6 these additional people that you're talking about?
 7 A. It would include that.
 8 Q. Okay. The last sentence of that first full paragraph on
 9 page 4 says, The largest outputs will be felt by utilities,
 10 construction, and transportation, and warehousing industries.
 11 I understand the utilities and construction. Can you
 12 explain the transportation and warehousing industries to me?
 13 A. Sure. For example, if the utility company needed to
 14 acquire, say, more equipment and needed to warehouse it -- say,
 15 for example, you know, they had to acquire more wire, more
 16 whatever and they needed to warehouse it, well, number one, they
 17 needed to get it there and then, number two, they needed to
 18 warehouse it, then that increases demand in that industry. Now
 19 that industry is broad and encompasses trucking and, you know, a
 20 lot of different things.
 21 Q. Do you know whether the specific utilities in South Dakota
 22 that provide electricity have the capacity or would be required
 23 to do any additions to their infrastructure to meet this demand?
 24 A. Well, let me just say this: I do know that they're going
 25 to have to build some new lines to get there. And they're going

1 to have to I think build some new substations. So I think the
 2 answer, if I understand your question correctly, is, you know,
 3 they're going to have to do some work.
 4 Q. Okay. Final question pertains to your socio-economic
 5 report on page 25. And I believe again this was a discussion
 6 about valuation. And at the top of that page it states that an
 7 industrial user might find the pipeline preferable. And I
 8 believe this is in context of the discussion of land values and
 9 why land may actually increase in value in that an industrial
 10 user might find the pipeline preferable.
 11 Are you aware of any industrial users that will be able to
 12 directly tap into this pipeline?
 13 A. Nope.
 14 MR. TOBIN: Thank you.
 15 MR. SMITH: Mr. Hohn, any last questions?
 16 MR. HOHN: Yes.
 17 RE-CROSS-EXAMINATION
 18 BY MR. HOHN:
 19 Q. I had a follow-up on page 30 of your testimony.
 20 A. Of the report?
 21 Q. Yeah. I guess it would be the report. I'm sorry.
 22 Page 30. The bottom of that page. Regarding law enforcement
 23 would not expect to be increased or -- regarding law enforcement
 24 emergency services would not be expected to increase
 25 dramatically during construction. That's the statement.

1 Would you anticipate that it would increase after
 2 construction?
 3 A. No.
 4 Q. Then the bottom portion of that very same paragraph
 5 starting with the words, "with crude oil pipelines, however,
 6 there is always concern that a leak or incident during operation
 7 would require emergency response."
 8 MS. SEMMLER: I believe the question was asked as to
 9 law enforcement. I don't know if the answer's any different,
 10 but the question was asked as to law enforcement.
 11 MR. HOHN: That's the second question.
 12 MR. SMITH: Overruled.
 13 Q. I guess the question is would you anticipate from an
 14 economic social impacts review whether emergency response, fire
 15 fighting, and so forth might increase because the oil line is
 16 running through the state?
 17 A. I don't -- and this is not -- you know, obviously I haven't
 18 studied that directly or I would have put that here in the
 19 report but I don't have any specific numbers. But my estimation
 20 would be that they would not hire new people but that there
 21 might be some additional equipment.
 22 Q. Costs?
 23 A. Costs. I don't think they would be significant.
 24 Q. And as a follow to that, are you aware of whether the taxes
 25 collected for the pipeline would be available for fire fighting

1 costs?
 2 A. That I don't know.
 3 Q. Okay. Looking to page 32 of that same document, the
 4 testimony presented by the Applicant was three permanent jobs
 5 would be stationed at Yankton and that there might be additional
 6 jobs that are part time.
 7 From your economic study, do you know what those part-time
 8 jobs might be involved in?
 9 A. No. I don't necessarily specifically know what they were
 10 referring to when they were referring to those part-time jobs.
 11 Q. Is it possible that they would be cleanup, involved in
 12 cleanup?
 13 A. You would have to ask them.
 14 Q. Okay. You in your testimony at the bottom of page 34 you
 15 make reference to the Pipeline Safety Improvement Act of 2002;
 16 correct?
 17 MS. SEMMLER: I believe we're beyond the scope of
 18 redirect. I object.
 19 MR. SMITH: I apologize. Where were you at, Curt?
 20 MR. HOHN: We're at the bottom of page 32 regarding
 21 the Pipeline Safety Act of 2002.
 22 MS. SEMMLER: And these questions were -- he could
 23 have asked them on direct, and he didn't. We're now on
 24 redirect.
 25 MR. SMITH: I probably agree with that. Is this

1 getting -- what are we talking about here, jobs or what?
2 MR. HOHN: I'm referring to the -- the question
3 relates to the changes in law that affect social and economic
4 issues or impacts.

5 MR. SMITH: Well, this is definitely you're beyond
6 what would be true recross, but ask your question.

7 Q. That last portion of the paragraph on page 32 at the bottom
8 of the page refers to two incidents. I'm not going to go into
9 the incidents. They're referenced in writing. They're in front
10 of us.

11 But in the very next page it estimates that because of the
12 change in law there is an estimate of between 5 billion and
13 11 billion in additional costs to the industry over 20 years.

14 Was that something you had available, or did you reference
15 that to another source?

16 A. Well, the footnote's right there, and it's referenced to
17 United States Department of Energy, Energy Information
18 Administration. What that is referring to is the cost of the
19 pipeline companies for getting into compliance with the more
20 stringent regulations.

21 Q. Is that considered part of your economic assessment?

22 A. Well, it's right here so it's in it.

23 Q. So it would be counted in part of the assessment, economic
24 assessment?

25 I guess let me rephrase the question. Is that considered a

1 benefit in your assessment?

2 A. It's neither considered a benefit nor a detriment. It's
3 just used as an example -- as an example or an illustration of
4 costs.

5 Q. Okay. Thank you.

6 MR. HOHN: I believe that's it, Mr. Smith.

7 MR. SMITH: Thank you. If there are no other
8 Commissioner questions, I'm going to -- unless I hear a loud
9 outcry, I'm going to excuse the witness.

10 You're excused. Thank you very much.

11 THE WITNESS: Thank you.

12 (The witness is excused)

13 (Discussion off the record)

14 MS. SEMMLER: Staff now calls Tom Janssen, please.

15 (The witness is sworn by the court reporter)

16 DIRECT EXAMINATION

17 BY MS. SEMMLER:

18 Q. Mr. Janssen, please state your name, business address, and
19 employer for the record.

20 A. My name is Tom Janssen. My business address is
21 615 First Avenue Northeast, Suite 425, Minneapolis, Minnesota
22 55413. I work at Merjent, Incorporated.

23 Q. Please state your educational background.

24 A. I received a B.A. from the University of St. Thomas in 1996
25 with majors in environmental studies and geography.

1 Q. And tell us about your work experience, Mr. Janssen.

2 A. From 1997 to 2004 I served as an environmental scientist at
3 Natural Resource Group. NRG is a Minneapolis-based consulting
4 company specializing in the energy industry.

5 In 2004 I was a founding partner at Merjent, Incorporated,
6 also a professional consulting company that specializes in the
7 energy industry.

8 I currently hold the position of senior analyst and
9 corporate secretary at Merjent, providing consulting services to
10 the pipeline and power line companies and agencies that regulate
11 them.

12 During the past 10 years I have specialized in the
13 environmental investigation of oil and gas line expansion and
14 maintenance projects. Specifically, I've supported many plans
15 with project planning and environmental scoping-related tasks,
16 managed environmental surveys, acquired permits and approvals,
17 prepared construction mitigation plans, and contract
18 specifications and provided preconstruction environmental
19 training and managed environmental inspectors and managers out
20 in the field.

21 I've also served as an environmental inspector
22 postconstruction monitor as part of various pipeline projects in
23 Minnesota, Illinois, and Iowa and recently served as a monitor
24 working on behalf of the Wisconsin DENR on a large crude oil
25 pipeline project in the State of Wisconsin.

1 Q. And Merjent was hired by the Commission to consult with
2 staff on this case; is that correct?

3 A. Yes.

4 Q. State for us in general what you reviewed in preparing your
5 prefiled testimony and preparing to testify here today.

6 A. I reviewed the TransCanada Keystone Pipeline Construction
7 Mitigation and Reclamation Plan. For the ease of this testimony
8 I'll call it the CMRP. It was prepared by Universal Ensco to
9 assess its adequacy of mitigating impacts to environmental
10 resources during construction. And I also assessed the measures
11 included in the CMRP that would help ensure the project area be
12 restored to original productivity within a reasonable time frame
13 for the proposed project route.

14 Source documents I reviewed include other mitigation plans
15 specific and not specific to the pipeline industry, including
16 but not limited to Keystone's Application materials,
17 U.S. Department of State EIS -- or Draft EIS, I guess, the
18 Federal Energy Regulatory Commission Upland Erosion Control and
19 Revegetation and Maintenance Plan, the FERC's Wetland and Water
20 Body Construction and Mitigation Procedures, other mitigation
21 plans from projects similar in size and scope, and then various
22 plans not necessarily specific to the pipeline industry but that
23 outline best management practices for soil erosion and
24 sedimentation control.

25 Q. In addition, did you have a chance to review the burden of

1 proof contained in SDCL 49-41B-22?
 2 A. Yes.
 3 Q. You'll find marked in front of you Staff Exhibit 7. Can
 4 you identify that as your prefiled direct testimony?
 5 A. Yes.
 6 Q. Do you have any corrections, additions, or edits to make to
 7 that testimony?
 8 A. I edited one of my recommendations in my surrebuttal
 9 regarding dust control. My edit is a little bit less stringent
 10 than my original in my direct testimony.
 11 Mr. Buster Gray's rebuttal of my testimony suggests that
 12 covering open bodied trucks or dump trucks, I guess, to control
 13 dust is not necessary because dust from open bodied trucks is
 14 inconsequential relative to dust from agricultural operations or
 15 created by wheels on vehicles on country roads, not paved roads.
 16 I agreed with Mr. Gray. He's correct that while traveling
 17 on nonpaved roads dust from open bodied truck or dump trucks
 18 that carry soil would likely be inconsequential. So I edited it
 19 in my surrebuttal, and my recommended stipulation now states
 20 Keystone should cover all open bodied trucks that can be changed
 21 to dump trucks carrying soil while in motion on paved roads to
 22 reduce fugitive dust emissions.
 23 Q. You did mention your surrebuttal just now. Do you see
 24 Staff Exhibit 15 marked in front of you?
 25 A. Yes.

1 Q. And can you identify that as your prefiled surrebuttal
 2 containing those changes?
 3 A. Yes.
 4 MS. SEMMLER: I would now like to offer Staff Exhibit
 5 7 and 15.
 6 MR. SMITH: Any objection?
 7 MR. KOENECKE: No objection.
 8 MR. TOBIN: No objection.
 9 MR. HOHN: No objection.
 10 MR. SMITH: Thank you. Staff's 7 and 15 are admitted.
 11 Q. With those two documents now in evidence, could you give us
 12 a brief review or summary of their contents?
 13 A. In my direct testimony and surrebuttal I generally found
 14 that the mitigation measures included in the CMRP are sufficient
 15 and if complied with during the project would help mitigate
 16 environmental impacts during construction. And the measures
 17 included in the plan would also help further restore the project
 18 area to preconstruction conditions effectively.
 19 Q. Do you have any specific recommendations to make to the
 20 Commission?
 21 A. I recommend that the PUC consider including my recommended
 22 stipulations from my direct testimony and surrebuttal as part of
 23 its permit or that Keystone choose to adopt my recommendations
 24 as part of its CMRP for the portion of the project within the
 25 State of South Dakota.

1 Q. And although you stand by all of those that are submitted
 2 into record in your direct and surrebuttal testimony, are there
 3 any particular recommendations that you'd like to highlight for
 4 the Commissioners?
 5 A. Well, there was one question that came up in Buster Gray's
 6 rebuttal of my direct testimony regarding topsoil segregation
 7 techniques. And really there are three different ways you can
 8 segregate topsoil. You can segregate the trench line only,
 9 segregate the trench plus spoil side, and you can segregate a
 10 full right of way of the topsoil.
 11 And for agricultural lands in particular and hay fields,
 12 which is a greater percentage of the project area in
 13 South Dakota, I strongly urge the Commission to consider
 14 requiring Keystone to employ the trench plus spoil side or full
 15 right-of-way segregation technique in agricultural lands and
 16 along hay fields.
 17 So it is my recommendation -- and I'm paraphrasing a little
 18 bit, but my recommendation is unless the landowner specifically
 19 approves otherwise on active croplands, residential areas, and
 20 hay fields, Keystone should be required to implement trench plus
 21 spoil side or full right-of-way segregation technique.
 22 And the plan, the CMRP, Keystone proposed to do trench line
 23 only across the entire State of South Dakota.
 24 Q. And your recommendation certainly wouldn't override a
 25 particular landowner request when it comes to that.

1 A. Correct. It's trumped by landowner approval. So if a
 2 landowner approved trench line only, that should be granted.
 3 MS. SEMMLER: I have nothing further, and
 4 Mr. Janssen's available for cross-examination.
 5 MR. SMITH: Is it Mr. Koenecke or Mr. White?
 6 MR. KOENECKE: It is, and I'll require just a minute.
 7 Thank you, Mr. Smith.
 8 MR. SMITH: Okay.
 9 CROSS-EXAMINATION
 10 BY MR. KOENECKE:
 11 Q. Good afternoon, Mr. Janssen. How are you?
 12 A. Hello. I'm doing fine.
 13 Q. I've got just -- well, one line of questioning. My
 14 understanding of what you just said prior to my questioning is
 15 that Keystone proposed to do topsoil stripping from the trench
 16 line only in South Dakota.
 17 A. I may have -- I would have to review the CMRP, but I think
 18 they -- my point was they proposed to do trench line only
 19 topsoil segregation technique in agricultural areas, actively
 20 cultivated agricultural areas. And they didn't specifically say
 21 the entire -- across the entire State of South Dakota.
 22 Q. Within the CMRP?
 23 A. Within the CMRP, yeah. Are you looking for the --
 24 Q. I'm looking for the specific reference within the CMRP.
 25 A. Let's see. It's --

1 Q. I'm looking at page 16 up at the top. Do you see where it
2 says, Unless otherwise specified by the landowner?
3 A. Yes.
4 Q. So would you take that to mean that Keystone's proposing to
5 do what the landowner requested first and foremost?
6 A. No. First and foremost -- unless otherwise specified by
7 the landowner the actual depth of the topsoil should be stripped
8 from the area to be excavated above the pipeline to a maximum of
9 12 inches.
10 Q. Trench only; correct?
11 A. Correct.
12 Q. Unless otherwise specified by --
13 A. Unless otherwise specified by the landowner. So the
14 starting point there is trench line only unless the landowner
15 specifies that he wants trench line plus spoil side or full
16 right-of-way segregation technique.
17 What I'm proposing in my recommendation is that the
18 starting way be trench plus spoil side or full right of way
19 unless the landowner requests that he wants trench line only.
20 Q. Very good. Thank you.
21 MR. KOENECKE: That's it.
22 MR. SMITH: Mr. Tobin.
23 MR. TOBIN: Thank you.
24
25

1 because either it's not planting or harvest and they are running
2 trucks up and down the road was there any --
3 A. No.
4 Q. Okay.
5 A. That answers your question. But mainly the dust is going
6 to come from the wheels on the roads, and, you know, some dust
7 will come from the agricultural practices as well. You'll have
8 a lot of heavy equipment running up and down dirt roads, and
9 that's where most of the dust will come from.
10 Q. I guess my comment would be regarding your opinion or your
11 observation of the fact that agriculture is seasonal in that
12 there are heavier periods of activity in which additional dust
13 generated by truck traffic may not be noticeable but there are
14 times in the year when it certainly would be noticeable would --
15 A. I didn't take that into account.
16 Q. With regard to your recommendations on the road and the
17 railroad crossings, which is a specific recommendation that
18 Keystone shall coordinate with emergency responders where
19 project-related activities occur near roads and railroads and
20 where road closures are necessary, is that just during
21 construction or maintenance as well and afterwards?
22 A. It depends. If you have a large scale maintenance project,
23 you may want to coordinate with railroads and emergency
24 responders as well. But that is mainly a time during
25 construction when you're going to have hundreds of people out

1 CROSS-EXAMINATION
2 BY MR. TOBIN:
3 Q. Good afternoon.
4 A. Hi.
5 Q. With regards to your recommendations in the table, are any
6 of those in addition to or outside which will be mandated by the
7 federal regulations for South Dakota Law?
8 Meaning, are your recommendations that you've given here
9 dictated by what's in the CFR right now, or are some of your
10 recommendations --
11 A. They comply with standard industry practices, and I used a
12 compilation of different documents to form my findings and
13 recommendations.
14 Q. So the recommendations in here are mandated by federal
15 regulation already?
16 A. No.
17 Q. Okay. So some of these are just professional opinion based
18 on your recommendation --
19 A. Yes.
20 Q. -- of --
21 A. Yes.
22 Q. With regard to the dust control was there any consideration
23 given to the seasonality of agricultural practices and the fact
24 that dust may be heavy during certain times of the year but not
25 others, and at those times of the year when it's not heavy

1 there.
2 Q. Regarding some of your recommendations as far as obtaining
3 additional data, I guess specifically here it's drain tiles.
4 We've seemed to talk a lot about those today. And I'm not
5 necessarily referring to just those, but is it part of the
6 recommendation that that data be available to others other than
7 just Keystone?
8 Because I believe part of what your recommendation is is
9 that they maintain this database?
10 A. Yes.
11 Q. So would that be available to others under your
12 recommendation?
13 A. Maybe the landowner for each parcel? No. I think that
14 they should maintain that on their own, and they shouldn't be
15 obligated to share that with the public.
16 Q. They shouldn't be or --
17 A. They should not be. That's my personal opinion.
18 Q. If there could be shown value into responders or emergency
19 personnel or to --
20 A. That is -- yeah --
21 (Discussion off the record)
22 Q. Value of information to the responders emergency personnel
23 and various local or state entities, would then your
24 professional opinion change as to the availability of that data
25 to other --

1 A. Absolutely, yeah.

2 Q. Could you just give me a brief maybe explanation of your

3 operation and maintenance recommendations regarding vegetation

4 as -- and I'm looking at page 5, the very last box and the top

5 of page 6 where you talk about the vegetation and the tree

6 height and some of those kind of things.

7 Could you explain that to me a little bit better?

8 A. Well, as I read through the finding and the recommendation,

9 to facilitate periodic pipeline corrosion leak surveys during

10 operation of facilities and wetland areas, Keystone proposed to

11 maintain a corridor centered on the pipeline of up to 30 feet in

12 a herbaceous state. Trees within 30 feet of the pipeline

13 greater than 15 feet in height would be selectively cut and

14 removed from the permanent right of way. Standard industry

15 practice is to maintain a corridor centered on the pipeline up

16 to 15 feet wide and selectively cut trees greater than 15 feet

17 in height within 15 feet of the pipeline.

18 That's very wordy and a lot of dimensions. The bottom line

19 is that they used a 30-foot wide corridor during the operation

20 phase of the project that will have -- they'll perform clearing

21 activities in order to perform their corrosion leak surveys.

22 And standard industry practice -- and this comes from the

23 Federal Energy Regulatory Commission but --

24 So they set the standard, and that standard is 15 feet. So

25 I just -- I corrected that and recommended that it be amended to

1 comply with the standard industry practice.

2 Q. So that part may be considered a federal requirement as far

3 as maintaining the corridor, or is that voluntary --

4 A. No. The FERC regulates natural gas pipelines. This is a

5 crude oil pipeline. The FERC created what's called a plan of

6 procedures, which is a baseline set of mitigation measures that

7 should be implemented during construction and sometimes during

8 the operation of facilities, which this requirement is part of.

9 So I used that because this is a construction of a

10 pipeline. It certainly applies to this project, but Keystone is

11 not required to comply with the FERC plan and procedures per se

12 because the FERC doesn't regulate oil pipelines in this manner.

13 Q. Okay. Thank you for that explanation.

14 MR. TOBIN: That's all I have for now.

15 MR. SMITH: Questions, Mr. Hohn?

16 MR. HOHN: Yes.

17 CROSS-EXAMINATION

18 BY MR. HOHN:

19 Q. Your dust containment, does that include -- your

20 recommendation include the watering or sprinkling of roads

21 during construction to contain dust?

22 A. I think they included that as part of their CMRP, if I

23 remember correctly.

24 Q. Okay. Your recommendation regarding the removal and then

25 replacement of topsoil, that's based on projects you've

1 experienced and --

2 A. Yes. I've done a lot of work in Illinois, Iowa, and

3 Minnesota, prime farmlands of the United States. And that's a

4 suitable segregation technique to maintain the chemical

5 qualities and fiscal qualities of the soil.

6 Q. And based on your experience, that ends up with the best

7 results overall?

8 A. Yeah. You're going to disturb more area because you need

9 more storage for the spoil so that's one downside of it. But

10 keeping the topsoil segregated from the subsoil has more

11 benefit.

12 Q. The Applicant's proposal would give the landowner the

13 option if they knew to request something different. But if a

14 landowner had never seen a large pipeline go through their

15 property, they wouldn't know the difference probably, would

16 they?

17 A. It's a valid concern.

18 MR. HOHN: Thank you.

19 MR. SMITH: Commissioners?

20 CHAIRMAN JOHNSON: On page 1 of your summary charts,

21 summary tables, rather, under weed control you make the

22 recommendation Keystone should obtain landowner consent in

23 writing prior to herbicide application.

24 Do you have any concerns about if there's an absent

25 landowner and if there's a particularly noxious weed because of

1 any one of a number of factors there's a time-sensitive

2 component to action?

3 THE WITNESS: That would be a valid concern. And I

4 think that does happen quite a bit.

5 CHAIRMAN JOHNSON: Would you revise your

6 recommendation to allow for some sort of a -- any time period

7 upon which if landowner authority couldn't be granted action

8 might be taken, or would you just pass by that property -- I

9 guess my concern is with noxious weeds they don't really know

10 the property lines.

11 THE WITNESS: Uh-huh. That's a valid concern. I'm

12 trying to put myself in the landowner's shoes.

13 CHAIRMAN JOHNSON: Sure.

14 THE WITNESS: And if I lived down in Arizona for half

15 the time and someone sprayed herbicide on my land when I was

16 gone for six to eight weeks and it wasn't my fault that I didn't

17 respond, I may feel a little bit differently about that.

18 CHAIRMAN JOHNSON: Well, and I think your

19 recommendation perhaps could be a little more cumbersome because

20 the landowners need to know the specific brand name and active

21 ingredient. I mean, if it was a one-time waiver presumably the

22 Applicant could work hard -- even if it took eight weeks or a

23 year and a half to get landowner consent but then if there was a

24 new product introduced or a new application method, if in each

25 instance new landowner consent had to be obtained, that might be

1 a little more difficult.

2 THE WITNESS: Yeah. Under each instance I think a

3 blanket approval would be the best way to go.

4 CHAIRMAN JOHNSON: Thanks very much.

5 THE WITNESS: One thing to add. Going into this

6 project you'll in theory be speaking to the landowners in

7 negotiating easements, and you may want to work that into your

8 easement agreement, the ability to apply herbicide when needed

9 or if needed.

10 CHAIRMAN JOHNSON: Yeah. Editorial comment. It is

11 an odd -- you know, South Dakota landowners hate noxious weeds.

12 They also hate anybody being on their property without

13 permission. Its an interesting battle. I think they hate the

14 second far more than they hate the first. So thanks.

15 MR. SMITH: I have a couple questions for you. With

16 respect to the topsoil segregation -- and I don't know anything

17 about it, you know, so your option would be to take what you

18 believe to be a preferred practice and make that the default

19 practice in the absence of landowner consent?

20 THE WITNESS: Yes.

21 MR. SMITH: And I'm not suggesting this. I'm just

22 throwing it out as another possible option that raises the

23 communication level one step at least from what TransCanada's

24 proposed would be some requirement of affirmative notification

25 with choice of method?

1 Is that another possibility that's slightly less

2 perhaps expensive or whatever for TransCanada?

3 THE WITNESS: So, for instance, a postcard that

4 explains what each technique is and --

5 MR. SMITH: I don't know about a postcard but --

6 THE WITNESS: Something along that where you have --

7 you educate the landowner as to what the techniques are, and

8 then you --

9 MR. SMITH: And their benefits and detriments.

10 THE WITNESS: And they make a box and --

11 MR. SMITH: Basically check a box as to what they

12 would prefer. Is that possibly another alternative, or wouldn't

13 you believe there's enough --

14 THE WITNESS: That's a suitable alternative. And I

15 don't even know that that's an alternative. That will be part

16 of the process, I think, when Keystone goes to negotiate its

17 easements to work out with the landowner.

18 MR. SMITH: With respect to the -- with the herbicide

19 too or pesticides or whatever it happens to be, are there any

20 particular concerns in their use with respect to certain maybe

21 vulnerable environments such as native prairies or any of that

22 kind of stuff, or is it pretty much universal?

23 THE WITNESS: Well, I don't know about native prairies

24 per se. I mean, you don't want to apply it -- generally you

25 don't want to apply herbicides within 100 feet of a water body,

1 within a wetland. You try to contain it to upland areas.

2 I don't know about the native prairie.

3 MR. SMITH: And if I understood correctly, you felt

4 another alternative to permission with respect to each

5 particular application could be if they could do some generic

6 noticing and opportunities for objection to like sort of a more

7 generic plan. Is that a possibility --

8 THE WITNESS: Oh, I think if you can get a blanket

9 approval -- I didn't mean to step over you again. I think if

10 you can get a blanket approval, it's probably best for Keystone

11 and the landowner.

12 MR. SMITH: Thank you. Commissioner Kolbeck.

13 COMMISSIONER KOLBECK: Did you look into any

14 South Dakota laws for load covers?

15 THE WITNESS: No.

16 COMMISSIONER KOLBECK: If South Dakota has --

17 THE WITNESS: No, I didn't.

18 COMMISSIONER KOLBECK: The other thing is in in the

19 first page of your recommendations you mentioned at least one

20 environmental -- I'm sorry. You mentioned at least one

21 environmental inspector.

22 THE WITNESS: Yes.

23 COMMISSIONER KOLBECK: In your opinion would a

24 employee of the DENR qualify for that?

25 THE WITNESS: That would qualify as a monitor. So the

1 DENR would monitor compliance with his or other state permits

2 that are issued.

3 COMMISSIONER KOLBECK: Could you provide the

4 Commission with a job description of an environmental

5 inspector -- or qualifications of an environmental inspector?

6 THE WITNESS: The inspector works on behalf of

7 Keystone to ensure compliance or help ensure compliance during

8 construction. So he advises the contractor what he can and

9 can't do to stay in compliance with the applicable environmental

10 rules and regulations.

11 The monitor, the person employed by the State, would

12 just go out there and monitor that the contractor and the whole

13 project personnel are complying and document that or cite

14 noncompliance.

15 COMMISSIONER KOLBECK: I guess is it your suggestion

16 that the PUC have someone who's very well versed in the federal

17 laws? Are you saying that specifically the recommendations from

18 the PUC?

19 THE WITNESS: Could you restate that?

20 COMMISSIONER KOLBECK: This inspector that you're

21 recommending would be an employee of the PUC? Is that what I'm

22 understanding you to say?

23 THE WITNESS: No. He would be an employee of

24 Keystone.

25 COMMISSIONER KOLBECK: Keystone.

1 THE WITNESS: Yes. Or contracted by Keystone to help
 2 them ensure compliance with environmental rules and regulations.
 3 COMMISSIONER KOLBECK: Okay. Okay.
 4 THE WITNESS: That's the inspector. A monitor would
 5 be employed by the State to monitor compliance. It's a little
 6 bit different, yeah.
 7 COMMISSIONER KOLBECK: That's what I needed. Thank
 8 you.
 9 THE WITNESS: Yep.
 10 MR. SMITH: Ms. Semmler.
 11 REDIRECT EXAMINATION
 12 BY MS. SEMMLER:
 13 Q. Just one quick clarification. There was some discussion
 14 about drain tile, the discovery thereof, and the sharing of
 15 information.
 16 Do you understand from Mr. Murdock's or Mr. Hannan's
 17 testimony that as that information is discovered it's
 18 incorporated into an emergency management integrity management
 19 plan and used going forward by the company as it works with all
 20 parties involved in that process?
 21 A. Yes. That would be a suitable use of that information.
 22 MS. SEMMLER: Thank you.
 23 MR. SMITH: Mr. Koenecke?
 24 MR. KOENECKE: Nothing further, Mr. Smith. Thank you.
 25 MR. SMITH: Any follow-on to the Commissioner

1 questions?
 2 MR. TOBIN: Just one.
 3 RECROSS-EXAMINATION
 4 BY MR. TOBIN:
 5 Q. On the soil segregation, would your recommendation be that
 6 if there are other facilities affected -- and I'm going to use
 7 the example of a water pipeline in which they may have a vested
 8 interest in how that soil is replaced as far as for support
 9 features as opposed to the -- I think the recommendation deals
 10 primarily with --
 11 And correct me if I'm wrong. Does it deal primarily with
 12 landowners with either agricultural or hay land? I don't know
 13 that I saw anywhere in the recommendation where specific
 14 inclusion of narrow easement holders -- for instance, if a water
 15 system has an easement for a pipeline and the soil's either
 16 going to be excavated out from underneath their pipeline to
 17 place -- and I don't know that that's been determined which way
 18 that's going to work.
 19 But would your recommendation include that the existing
 20 easement holder for that line be also given some ability to
 21 dictate the replacement of that soil?
 22 And would it be appropriate?
 23 A. I don't know legally whether or not you as a --
 24 Q. How about from a professional opinion standpoint?
 25 A. Should you have a say in what happens to that soil and how

1 it's handled? I think that depends on how you write your
 2 easement or how the easement agreement is written.
 3 Q. I'm saying if there's an existing easement across the
 4 ground and the pipeline comes along and intersects --
 5 A. The crossover, yeah.
 6 Q. Crossover. So if the current easement holder -- in your
 7 professional opinion should they have the -- should they be
 8 consulted as other landowners as far as the segregation and
 9 replacement of the soils during the excavation process?
 10 A. If you have those rights within your easement, I think so,
 11 yes.
 12 MR. TOBIN: Thank you.
 13 MR. SMITH: Questions, Mr. Hohn?
 14 MR. HOHN: I have two.
 15 RECROSS-EXAMINATION
 16 BY MR. HOHN:
 17 Q. With regard to the weed control, the access that
 18 TransCanada's securing as an easement versus ownership, if they
 19 owned the property, it would be solely their decision as to weed
 20 control, wouldn't it?
 21 A. Yes.
 22 Q. So the reason there's consultation with the landowner is
 23 it's an easement access?
 24 A. Technically they would be performing that consultation
 25 pursuant to their easement.

1 Q. Sure. And the other -- the follow-up to Commissioner
 2 Kolbeck's question about an inspector, a PUC provided inspector,
 3 would there be anything that would prohibit the PUC from having
 4 an on-site inspector?
 5 A. No. The PUC should strongly consider having an on-site
 6 monitor to ensure compliance.
 7 MR. HOHN: Thank you.
 8 MR. SMITH: Any last Commissioner questions?
 9 COMMISSIONER KOLBECK: I do. I think that was a
 10 misstatement of the record that the PUC wouldn't hire a
 11 consultant -- wouldn't hire an employee to do that, that it
 12 would be TransCanada's expense. Is that correct?
 13 THE WITNESS: For the environmental inspector. But I
 14 think we're getting tripped up here over the difference between
 15 an environmental inspector who works on behalf of the company
 16 and a monitor who would work on behalf of you or any other State
 17 agency to ensure compliance.
 18 COMMISSIONER KOLBECK: Okay.
 19 THE WITNESS: Did I just confuse things more?
 20 COMMISSIONER KOLBECK: Well, I'm a little -- I think I
 21 understand what you're getting at. I do. I guess my question
 22 is satisfied. Thank you.
 23 THE WITNESS: Okay. I guess the bottom line is I
 24 recommend that the PUC and other State agencies look into
 25 possibly employing a monitor just to make sure that during the

1 project Keystone and the contractor is complying with the State
2 rules and regulations.

3 But at a minimum my recommendation is that they employ
4 one environmental inspector per spread, which is definitely
5 industry standard at this point.

6 MR. SMITH: Commissioner Johnson, did you have a
7 question?

8 CHAIRMAN JOHNSON: No, sir.

9 MR. SMITH: Commissioner Hanson.

10 COMMISSIONER HANSON: No. Thank you much.

11 MR. SMITH: Ms. Semmler, did you have additional
12 follow-on?

13 MS. SEMMLER: Just a clarification of that same point.

14 REDIRECT EXAMINATION

15 BY MS. SEMMLER:

16 Q. Do you have personal legal knowledge of the South Dakota
17 PUC siting authority and whether or not it would have continued
18 supervision responsibilities of this pipeline, or could it
19 possibly be the responsibility of a different state or federal
20 agency?

21 A. My answer is no. I don't know.

22 MS. SEMMLER: Thank you.

23 MR. KOENECKE: Mr. Smith, I have a couple of questions
24 if I could ask them, please.

25 MR. SMITH: Go ahead.

1 RECROSS-EXAMINATION

2 BY MR. KOENECKE:

3 Q. Mr. Janssen, you were asked questions previously about an
4 easement holder and topsoil stripping?

5 A. Yes.

6 Q. Would it be your position that topsoil stripping is related
7 to agricultural uses of property?

8 A. Yes.

9 Q. And would it be related to any other uses of property that
10 you're aware of?

11 A. Not that I can think of off the top of my head.

12 Q. Very good. I'm trying to recall. I looked briefly through
13 your direct and surrebuttal testimony.

14 Did you discuss the hiring of a monitor by the PUC anywhere
15 within that testimony?

16 A. No.

17 Q. So this is the first we're hearing about it is today?

18 A. Yes.

19 Q. You haven't had a chance to consider that further than what
20 we've just done on the record now?

21 A. Correct. Yep. I was asked a personal opinion.

22 Q. Very good. Thank you.

23 MR. SMITH: I think we're done. You may step down.

24 THE WITNESS: Thank you.

25 (The witness is excused)

1 MR. SMITH: Does that then conclude the staff's case?

2 MS. SEMMLER: That does conclude staff's case.

3 MR. SMITH: Is it then time to take a break?

4 CHAIRMAN JOHNSON: Before we go to break, Mr. Smith,
5 with your indulgence I would just let people know that the
6 website, the Internet streaming of these proceedings, has been
7 quite a hit statewide. We do track unique daily visitors, not
8 hits but unique daily visitors, and last week there were about
9 2,420 of those unique daily visitors.

10 And my estimation would be about two-thirds of that
11 traffic would be attributed to this proceeding. So perhaps
12 thousands of South Dakotans are following this. So thanks.

13 MR. SMITH: Thank you. And why don't we take a
14 15-minute break. We'll reconvene -- is it 3? 10 to 3?

15 We'll reconvene at 5 after 3.

16 (A short recess is taken)

17 MR. SMITH: Okay. We're going to come back into
18 session following a short recess. We've just concluded the
19 staff's case.

20 And at this point in time in the ordinary course of
21 business we would proceed to the Applicant's rebuttal, and
22 generally speaking that usually concludes the hearing.

23 Before that, I don't know, this being the
24 Commissioner's hearing, though, do the Commissioners have any
25 special requests or whatever before we proceed to the

1 Applicant's rebuttal?

2 COMMISSIONER KOLBECK: I have my calendar open until
3 Friday so if we could stay until Friday, that would be --

4 MR. KOENECKE: I object.

5 MR. TOBIN: I object.

6 MR. SMITH: Any other Commissioner thoughts on that?
7 Otherwise, we'll proceed to the Applicant's rebuttal.

8 Mr. Koenecke.

9 MR. KOENECKE: Thank you, Mr. Smith. We intend to
10 call Mr. Gray back to the stand for a brief period of time. But
11 before we do that, the Commissioners asked numerous questions of
12 our witnesses throughout the hearing, and we attempted to and
13 have put together -- it's a written submission. It's in the
14 forms of Exhibits TC 25, 26, and 27.

15 We'd like to put those in through stipulation rather
16 than call witnesses back to the stand and essentially have them
17 be asked if that's really what they put together for the
18 Commissioners.

19 I have distributed it to the parties. I apologize,
20 Ms. Anderson, and Mr. Moeckly, I did not distribute it to them.
21 I don't see them in the room. But I'd ask if 25, 26, and 27
22 could be admitted through stipulation.

23 You asked Ms. Tillquist about what sources were
24 consulted, the qualifications to work in the SCADA system, the
25 HAZWOPER training requirements, grain carts, a basis for the

1 assertion that pipelines are the safest way to transport crude
2 oils. There's a big study here. You know, it is what it is,
3 and we'd just like to put it in the record through stipulation
4 if possible.

5 MR. HOHN: Could you identify which is which in terms
6 of the numbering of the exhibits?

7 MR. KOENECKE: 25 is the data sources used for soils
8 and geology underlying the Keystone Pipeline in South Dakota.
9 I'm sorry. Weren't yours numbered? I apologize for that.
10 26 starts with the TransCanada on top. That's 26.
11 Yep.

12 And then 27 is this study on safety performance in the
13 pipeline industry, and contained within there there are some
14 references to the assertions about the safety of pipelines
15 relative to other methods of transportation. And I could refer
16 people to those specifically if they'd care to have me do that.
17 It is about a 30- or 40-page document.

18 CHAIRMAN JOHNSON: Aren't they all?

19 MR. SMITH: Again, we haven't seen it at all. So, you
20 know, does counsel and Interveners and staff, do you need a
21 little time to review these documents, additional time?

22 MS. SEMMLER: We've actually seen them. They're
23 documents the staff's experts used in the process of creating
24 their reports. So I've seen them. Or at least the largest
25 document of the group. And I don't object.

1 MR. TOBIN: I, of course, haven't seen them and
2 haven't had the benefit I guess of prior testimony when my
3 partner was here. I wouldn't have any objection to 25 or 26.

4 27 without maybe having a little better background as
5 to what testimony took place on previous days, I'm a little bit
6 reluctant to stipulate to that.

7 MR. SMITH: And which one is that? Is that the
8 report?

9 MR. KOENECKE: That's the report that Commissioner
10 Hanson, I believe, asked for prior in the week. I'd have to go
11 back and look at my daily copy to see what the circumstances
12 were.

13 MR. SMITH: And that was just all he was asking for is
14 a source for her statement that pipelines were the safest form
15 of transporting these volumes of product?

16 MR. KOENECKE: That's my recollection.

17 MR. TOBIN: It seems like a very voluminous document
18 to support that one.

19 MR. SMITH: And it sounded based on his description
20 that it encompassed more than that. But, you know, again, I
21 haven't seen it, Rod, so I don't know what it says.

22 MR. KOENECKE: If it can't be stipulated into the
23 record, we'll put a witness up and have her go through it then.

24 CHAIRMAN JOHNSON: Another alternative is, you know,
25 we could certainly put it into our public comment section. That

1 way it would be available to Commissioner Hanson and anybody
2 else in our universe who wanted to visit our website if they
3 wanted to look at it.

4 Couldn't necessarily be used if the Commission were to
5 write an Order with conditions. But we do have an expert's
6 opinion on the record that presumably could be cited if the
7 Commission was interested in doing such. Just another option
8 for you to consider.

9 MR. KOENECKE: I guess if it's satisfactory to
10 Commissioner Hanson. He asked.

11 COMMISSIONER HANSON: Yes. I have no objection to the
12 method Commissioner Johnson just suggested. As long as I have
13 access to that, that's great.

14 MR. KOENECKE: We'll do that then. Thank you,
15 Commissioner.

16 MR. TOBIN: I wouldn't have any objection to that
17 either. Thank you.

18 MR. HOHN: Wouldn't have an objection if it's not
19 entered as an exhibit in the record. If it was going to be as
20 an exhibit to this hearing, we'd want to question the author.

21 MR. SMITH: We've allowed a mountain of stuff
22 including a number of your own documents, Mr. Hohn. So we'll go
23 that way. And I don't think -- honestly in terms of that
24 particular statement my guess is that that will not -- the
25 outcome of the case probably won't hinge on that statement

1 anyway.

2 We will do that then. TC Exhibits -- the numbers were
3 25 and 26 -- will be admitted for stipulation of the parties.
4 And Exhibit 27 will be denied. And instead TransCanada will be
5 afforded the opportunity to submit it as public comment.

6 MR. KOENECKE: And I'll do that on my way out of the
7 building. Thank you.

8 MR. SMITH: Thank you. At this point in time then
9 trying to recall your statement then you had at least one
10 witness you intended to call as a rebuttal witness.

11 MR. KOENECKE: I would call Mr. Gray to the stand,
12 please.

13 MR. SMITH: Thank you.

14 DIRECT EXAMINATION

15 BY MR. KOENECKE:

16 Q. Mr. Gray, how are you this afternoon?

17 A. Fine.

18 Q. Good. Good. I'm going to show you what I've marked as
19 TC -- I'll remind you you're still under oath.

20 Is that the first time anyone's ever had to do that to you?

21 A. Well, maybe not.

22 MR. SMITH: Did you happen to miss your ice storm as a
23 result of this?

24 THE WITNESS: It appears that it's not as tough in
25 Kansas City as they thought earlier in the day, which is quite

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1 good.

2 MR. SMITH: I was about to say you got into some good

3 weather up here.

4 THE WITNESS: That is right.

5 Q. I've given you what we've marked as TC 28. Is that a

6 document you're familiar with?

7 A. Yes, it is.

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

9 A. It's a document that we utilize in our discussion with

10 landowners regarding their -- their specific tract of land. And

11 I almost want to call it a checklist, even though it's not

12 labeled as a checklist. But it's truly the mechanism that we

13 utilize to try and be more specific with landowners about issues

14 on their particular tract of land, that every tract of land is

15 not the same and it has different uses, different improvements.

16 And if you look at the -- we call it a Construction

17 Restriction Binding Agreement. The land agents use this form in

18 discussion with the landowners to inquire specific things on

19 their tracts of land. And if you notice, it talks about

20 everything from irrigation and drainage systems, existing

21 utilities, land uses, and even on the back end, the topsoil

22 conservation and methods, this is utilized together, this

23 information. And we call it construction restrictions.

24 And when this is completed -- and I'll try and use just an

25 example of something here is that let's just assume merchantable

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1 timber was on a particular landowner's tract of land and that

2 particular landowner wanted that timber stacked and left for his

3 use for his self for whatever he wanted to do. He would check

4 that, and down in the comments section he would give us

5 instructions as to what he wanted done.

6 This information is transferred into our construction

7 contracts on a tract-by-tract basis that becomes binding to our

8 construction contractors to perform or to honor these things

9 that wind up in these binding agreements.

10 So but I think from our industry's perspective, our key

11 item is is we understand landowners don't know about our

12 industry, what we do, and this is a mechanism to try -- and this

13 is not -- I kind of -- the word bothers me, but it's somewhat a

14 mechanism to extract information from them that we're concerned

15 about during construction because they may not know to

16 voluntarily tell us about it.

17 So it's completed and the information ultimately comes back

18 and winds up in our construction contracts and our contractors

19 are bound to comply with these. And typically as long as the

20 information's consistent or it's reasonable, we typically are

21 not very -- strongly negotiate with them to take them away. If

22 they're very -- these are generally things that are pretty

23 specific or sensitive to a landowner, and it's something that we

24 try and comply with if we can.

25 MR. KOENECKE: I'd move TC 28 for admission.

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1 MR. SMITH: Mr. Tobin, Mr. Hohn, any objection?

2 MR. TOBIN: Is it proper for me to ask questions now?

3 MR. SMITH: If you have some for the purposes of

4 objection. I think it's just being offered to show this is the

5 document they use, but --

6 MR. TOBIN: It is to do with -- would this document,

7 if it's altered or amended, be supplemented into the record if

8 admitted today? Meaning if it's changed before you've gone out

9 and gotten executed copies of it.

10 Q. Are you currently using this document in the field,

11 Mr. Gray, with respect to landowners and easements?

12 A. Yes.

13 Q. And in almost all cases it will be altered by the landowner

14 making check marks on it and adding information to it; correct?

15 A. That's correct. It's completed, and then I believe it's on

16 page 2 there's actually an area where you can write in things.

17 Q. But you're not going to make changes as to the specific

18 form of the document itself?

19 A. Typically not, no. But people can hand edit onto it.

20 MR. TOBIN: No. My comments were on the preprinted

21 materials. If they're changed, would it then be supplemented --

22 MR. KOENECKE: We would do that, if he changed it.

23 MR. TOBIN: Okay. That's my question. Then I don't

24 have any objection.

25 MR. HOHN: No objection.

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1 MR. SMITH: Staff?

2 MS. SEMMLER: No objection.

3 MR. SMITH: TC Exhibit 28 is admitted.

4 MR. KOENECKE: Thank you.

5 Q. So during easement negotiations does the land agent discuss

6 this with the landowner at that time?

7 A. That's correct. It's during the negotiating process.

8 Q. And if you turn the page over to 2, number 10 at the top,

9 it appears to me like the land agent discusses topsoil stripping

10 and conservation measures.

11 Am I right?

12 A. That's correct.

13 Q. Can you tell me what ditch line means there in the third

14 line?

15 A. That's, as we've talked about, the trench, stripping on

16 over the trench only.

17 Q. And I believe you testified just in the last few minutes

18 that this becomes a part of the contract with your pipeline

19 construction contractor in each and every case?

20 A. In each and every case. This document does not go in the

21 contract, but the requirements are transferred into the

22 contract.

23 Q. As I understand your testimony, Mr. Gray, you're not in

24 favor of stripping the topsoil from the full right of way?

25 A. I'm not. And, you know, I've heard Mr. Janssen's testimony

1 and respect -- I certainly respect his testimony. My experience
2 over 30 years has been that topsoil in major agricultural areas
3 like the Midwest is a very, very sensitive issue to the
4 landowners themselves.

5 I've actually experienced on many occasions because most --
6 when I say most pipeline projects are large projects, natural
7 gas pipeline projects under the FERC. And the FERC guidelines
8 are just as Mr. Janssen suggested. They suggest a trench and
9 spoil side as kind of the default unless the landowner says
10 otherwise.

11 But in my experience I've had a multitude of landowners
12 come out on the construction right of way and quiz and question
13 our construction crews about what in the world are we doing
14 moving so much topsoil off of their right of way. And they
15 essentially have asked us to stop in it.

16 So this not being an FERC process, mine was, again, the
17 least disturbance. We request of the landowner what his
18 preference is. We explain to him the methods and let him
19 decide. And then we don't have jeopardy during construction
20 with contractors.

21 Q. If I understand right, then you're advocating a default
22 rule which leaves the most topsoil in place; am I right?

23 A. That is correct.

24 Q. And then your plan would be to go back and decompact what's
25 been left in place after you're done?

1 A. Is topsoil is such when I say you decompact, but you
2 typically just cultivate for topsoil not -- don't rip. But as
3 far as full right-of-way stripping is concerned is my personal
4 experience has been when you take 6, 8, or 12 inches across
5 110 feet of construction you are moving a mountain of topsoil.

6 And, you know, as much as we try to work with our
7 equipment, we aren't working with teaspoons. We're working with
8 large, earthmoving equipment. And any time you handle and
9 transfer all of this material it's my belief you're doing more
10 harm than good.

11 Q. Thank you, Mr. Gray. Do you plan to use dust control
12 methods near homes and businesses during construction?

13 A. I believe the construction mitigation plan -- I didn't have
14 my copy with me today but typically in proximity to residences
15 and businesses, we will either sprinkle or water roads to keep
16 dust down or sometimes I get my chemicals mixed up but use
17 magnesium chloride, which is kind of a sticky tackifier to put
18 on roads for a few hundred feet upstream and downstream to
19 control dust.

20 Q. Mr. Gray, you heard the testimony about restoring native
21 prairie and doing move-arounds?

22 A. I did.

23 Q. Can you describe for the Commission the effect those
24 move-arounds might have on the construction process?

25 A. Is from Mr. Janssen's testimony he indicated maybe being

1 able to put this into a group of five locations or move-arounds.
2 But I have several I guess comments to it is that in the
3 logistics of this assembly line that I described that moves very
4 rapidly of the various crews in it that the 4 or 500 workers a
5 day we're spending in the neighborhood of 300 to \$400,000 a day
6 in construction.

7 To disrupt that operation to move around is extremely
8 expensive. Secondly, the lost time in efficiency and production
9 to stop and start extends the duration of our project. We're
10 working into the fall and winter here, and one of the challenges
11 we have is to try and get our work completed and restore the
12 right of way and try and get seeding done prior to winter
13 conditions setting in which prevents germination. So that just
14 compounds that problem.

15 Probably the biggest one for me personally is that, I mean,
16 it's a large number of people and equipment. When we move
17 around we have to load it on trucks. We have to get on the
18 roads. We have to move around to the new spots. Causes more
19 damage to roads, exposes the public to more safety issues
20 relative to hauling of these equipments.

21 We have proven over time that we can restore native
22 prairies and grasslands. I believe our efforts and energy
23 should be focused on mitigation and reclamation and not moving
24 around.

25 And lastly for me in my 30 years -- and I've worked all

1 over the Midwest as well as Wyoming and western states that have
2 grasslands and prairies. I have never had to deal with a
3 mitigation of a move-around for a native prairie or grassland.

4 Q. Have you been successful in your reclamation of native
5 prairies, though?

6 A. Is Mr. Koenecke -- I mean, I'm in the process of building
7 and constructing and operation goes to someone else but I would
8 suggest to you over my 30 years I have not heard a lot of
9 things, complaints back, of an inability to do that over time.

10 Q. Do you know whether native grassland seeds are commercially
11 available?

12 A. Is I don't know the specific species that are dealing with
13 here in South Dakota, but many of the native species you can
14 acquire commercially through seed companies for this restoration
15 process. Exotic species that I've seen more in Montana and
16 Wyoming, harvesting of those off the right of way, I have been
17 involved with that practice, but it is my understanding that
18 that's not the case here in South Dakota.

19 MR. KOENECKE: I've got nothing further. Thank you.

20 MR. SMITH: Mr. Tobin, cross-examination of --

21 MR. TOBIN: Buster, I've been waiting my entire career
22 to get a crack at you. I want you to know that.

23 THE WITNESS: I've got a 4:30 flight, Rod.
24
25

1 CROSS-EXAMINATION

2 BY MR. TOBIN:

3 Q. With regard to the native plant species, do you really have

4 the expertise or knowledge as to whether there's sufficient

5 commercial availability of all species that may exist in a

6 prairie ecosystem?

7 A. No, I don't.

8 Q. With regards to the soil segregation issue, my previous

9 question I believe to Mr. Janssen regarding easement holders who

10 may be in the path of the pipeline, would it be your

11 understanding that a pipeline -- an intersecting easement holder

12 of a line may indeed have a concern about what soils are put

13 back in position underneath their line?

14 What I mean by that is as opposed to the mixing of the

15 topsoil with the subsoil, if that involved a mixing of black

16 dirt and clay as opposed to replacing just the clay underneath

17 their existing line, do you understand where that may be a

18 concern of that --

19 A. And I wouldn't -- I guess I wouldn't answer your question

20 relative to topsoil in it is that in crossing other utilities

21 and things our backfilling not only the soils but the techniques

22 of how we do it --

23 And the example I would give is we're going to take a big

24 backhoe bucket and just dump it? No. Because that might break

25 the utility that we're crossing. So certainly the backfill

1 materials and the techniques we use are something that we would

2 be working with existing utilities on as well as how we might

3 support their utility so that we don't damage it.

4 Q. But if they requested the removal and disturbing of the

5 topsoil to keep that segregated from the subsurface soils, is

6 that something you would be willing to work with them on?

7 A. I would suggest to you yes. But my thoughts are in dealing

8 with topsoil separation at a utility crossing because we

9 typically have to make a larger excavation that we would

10 normally do that anyway.

11 Q. Okay. Final question. Regarding soil compaction, you

12 indicated that you cultivate the topsoil, and that you don't rip

13 necessarily. But isn't it relatively common knowledge that soil

14 compaction by the driving of heavy equipment will extend quite

15 deep into the soil, not just in the soil but can indeed extend

16 into the lower layers of the soil?

17 A. That's correct. And it's one of the -- it is one of the

18 more -- I would suggest to you my opinion it's probably the most

19 significant issue we face in returning agricultural land to

20 original productivity.

21 But the ripping tools and things that we use are actually

22 subsoil rippers. And in many instances we do that prior to the

23 replacement of topsoil if we've removed it. But typically when

24 we put the topsoil back on we don't rip and mix subsoil or

25 topsoil so we'll just till and cultivate the topsoil.

1 Q. So just to make sure I understand, there will be ripping of

2 the subsoil. It's just that you do it prior to replacement of

3 the topsoil, and then you cultivate the topsoil after placement?

4 A. That's correct. But I would like to clarify that if we

5 only did trench line stripping only, the ripping of the subsoil

6 with para plows or whatever we would do even with the topsoil on

7 top.

8 MR. TOBIN: Okay. Thank you. That's all I have.

9 THE WITNESS: Uh-huh.

10 MR. SMITH: Mr. Hohn.

11 CROSS-EXAMINATION

12 BY MR. HOHN:

13 Q. Following that line of questioning, if Mr. Janssen's -- the

14 previous witness's testimony were included, his recommendation

15 were included and the default was clearing the right of way of

16 black dirt, piling it, working off the clay, and then putting

17 the black dirt back, if that were done -- if that were required

18 as a condition and the landowner had the option of saying I want

19 to do it a different way, you could manage that as well,

20 couldn't you?

21 A. Mr. Hohn, I want to be sure I understood the question. But

22 when I say even if there was a fourth way besides the three I've

23 described.

24 Q. Yeah.

25 A. I would suggest to you as long as it was reasonable, we

1 would attempt to comply.

2 Q. Whatever the conditions are that are set you'll need to

3 convey something -- your direction to your contractor when you

4 bid the job; is that right?

5 A. Is actually the project has been bid. We would be

6 conveying it to the actual contractor that has been selected.

7 Q. So whatever the final direction was to the contractor

8 regarding topsoil, they would follow your direction?

9 A. That's correct.

10 Q. Okay. Regarding TC 28, was this document gathered and

11 secured when your agents went out and secured the easement?

12 A. It is a document that they have in their possession in

13 their meetings prior to execution of an easement that they are

14 to complete.

15 Q. Would this information be provided to the contractor doing

16 the digging on that land?

17 A. This information would -- when I say the contractor, we

18 have a prime contractor who does the majority of pipeline

19 construction himself. He may subcontract a few activities, but

20 the majority of pipeline contractors do the majority of the work

21 themselves.

22 So in this particular instance all those operations would

23 comply with the requirements off of this list.

24 Q. So when you entered the landowner's property you'd say,

25 well, here's the agreement with this party and here's how you

1 have to do this work?

2 **A.** It's actually a section in the construction documents

3 that's called construction restrictions, landowner construction

4 restrictions. And the crews will have that booklet for lack of

5 a better word. There's a tract number on this document --

6 **Q.** Sure.

7 **A.** -- of how we identify the landowner. And that's tied to

8 the construction drawing. And when he crosses that property

9 line if they are different construction requirements, the

10 foremen are expected to study those and implement those actions,

11 and our inspectors have the same documents as well.

12 **Q.** Have the agreements -- this binding agreement and

13 restrictions that you've secured, an agreement between Keystone

14 and the landowner, has that been filed as part of this hearing

15 record, the completed documents?

16 **A.** Not -- not to my knowledge.

17 **Q.** I'd like to draw your attention to item 6 on page 1, the

18 soil type where it refers to sand and clay.

19 Do you see that?

20 **A.** Yes, I do.

21 **Q.** Is it intended in that line that the landowner would be

22 telling your agent what the soil makeup was, sand, clay, cobble,

23 what their knowledge was of it?

24 **A.** That's correct.

25 **Q.** And on the second page, item 12, Other Considerations,

1 there was a line -- the words High Water Table and a blank line.

2 Is it intended the landowner would be telling your agent

3 what the water table depth was as far as they knew?

4 **A.** That's correct. We're wanting the personal knowledge they

5 have.

6 **Q.** And in that same section about three lines down, water

7 wells within 150 feet in septic tanks, those would be estimated,

8 wouldn't they, the proximity?

9 **A.** We're asking for a landowner if he is aware of them within

10 that distance of our trench line or our pipeline.

11 **Q.** Much of the testimony or a lot of the testimony that was

12 submitted at this hearing referenced things like sandy soils and

13 water sources.

14 Might not that information have been useful to the

15 Commission in terms of knowing what landowner reaction there was

16 or comment there was all along the pipeline route?

17 **A.** Would you repeat that, please.

18 **Q.** A great deal of the questions and discussion raised at this

19 hearing dealt with types of soil disturbed and a depth of water

20 table.

21 If you've, in fact, surveyed a lot of the landowners as

22 part of your easement process, your land agent process, why --

23 wouldn't that information have been useful to the Commission to

24 have during this hearing?

25 **A.** I don't mean this to be wrong, but I think ask the

1 Commissioners.

2 **Q.** Okay. You might have a point there. But to your knowledge

3 the completed surveys were not filed.

4 **A.** No.

5 **Q.** Okay. And then on the last page, and this is my last

6 question, the item 15 in the second line, second sentence there,

7 terms, conditions, and provisions shall be binding upon heirs,

8 executors, administrators, et cetera, and the agent of the

9 parties hereto.

10 And so the owner signs and a tenant signs, and the place

11 where it says agent, that would be your land agent for Keystone?

12 **A.** That is correct.

13 **Q.** So this is an agreement as to how something's going to be

14 done as the project crosses the land?

15 **A.** That's correct.

16 **Q.** And it's binding. I'm curious. This document is signed by

17 your agent, but the easement wasn't; is that right?

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

19 **Q.** Is there a reason why this would be signed and the easement

20 wouldn't?

21 **A.** Certainly I'm not legal counsel as far as it goes, but the

22 easement is a recorded instrument that stays of record at the

23 courthouse for the posterity of the land as far as that goes,

24 and it's my understanding that that binds the company and that

25 recording of that contract. This is not recorded at the

1 courthouse.

2 It is an agreement between two parties, and for it to be

3 valid my understanding is that it needs to be bound to like a

4 contract.

5 MR. HOHN: Thank you.

6 MR. SMITH: Ms. Semmler.

7 MS. SEMMLER: I do have one question.

8 CROSS-EXAMINATION

9 BY MS. SEMMLER:

10 **Q.** Mr. Gray, in your preferred trenching method, as I

11 understand it, subsoil will sit -- subsoil removed from the

12 trenching area will sit on top of some topsoil on the spoil

13 side? Is that what it's called?

14 **A.** That's correct.

15 **Q.** Is there a method that you use to prevent a mixing of that

16 topsoil and the subsoil removed from the trench line?

17 **A.** In the particular method called the trench line only, the

18 spoil would sit on top of the topsoil. And generally with

19 vegetation or something that's there it gives a visual

20 demarcation that when you're pulling the subsoil back in it

21 gives you a visual for the operators to be able to distinguish

22 that.

23 In some instances we take hay or something like that to

24 scatter across the top of the ground to better distinguish it as

25 well.

1 **Q.** In cultivated ag land where there wouldn't be that
 2 vegetative barrier is that when you use the straw or hay, or is
 3 there another method you use in that area?
 4 **A.** That's correct. That's where you would use something like
 5 hay or straw or mulch that would give you a distinguishing
 6 barrier, for lack of a better word.
 7 **MS. SEMMLER:** Thank you. Nothing further.
 8 **MR. SMITH:** Commissioners?
 9 **COMMISSIONER KOLBECK:** I just have a couple really
 10 quick questions. Number 6, as Mr. Hohn had brought up, the soil
 11 type, does that in any way preempt the HCAs or anything like
 12 that or anything you find on a federal -- or from DENR, or is
 13 this in augmentation to that?
 14 **THE WITNESS:** I don't see any relationship of this to
 15 HCAs or anything. This is more contractibility type issues.
 16 **COMMISSIONER KOLBECK:** If they say it's sand, it's
 17 kind of a guess on their part?
 18 **THE WITNESS:** You know, we've found that landowner's
 19 very knowledgeable. And for me with this information it's -- it
 20 helps us in determining the types of equipment we might use,
 21 whether the wheel trenchers or the backhoes. It just makes us
 22 smarter prior to opening up the ditch.
 23 **COMMISSIONER KOLBECK:** Okay. And this in no way
 24 trumps any federal requirements or anything like that?
 25 **THE WITNESS:** No, sir. Not at all.

1 **COMMISSIONER KOLBECK:** There's a lot of stuff on here.
 2 Is this something that they basically say they want, or is this
 3 brought back to you and then determined to be reasonable?
 4 **THE WITNESS:** Is what this typically will do is it
 5 will prompt or -- prompt a landowner to think about things that
 6 our construction might do. I would suggest to you there are
 7 many landowners that other than just filling it out, there will
 8 be nothing on it.
 9 **But it's our ability to -- you know, what about**
 10 **access? We've heard that mentioned several times with cattle.**
 11 **That a landowner can say on here I have cattle in the field. I**
 12 **need them to be able to move back and forth. I need some lanes**
 13 **kept open during construction to allow that. And it gives them**
 14 **a vehicle to get that information to us.**
 15 **COMMISSIONER KOLBECK:** Okay. And were the landowners
 16 that were here, were they approached with this after they were
 17 here?
 18 **THE WITNESS:** Is, you know, I would defer to those
 19 landowners. But some of the landowners are a large group that
 20 have been present in our hearings simply will not communicate
 21 with us. So they may not have seen this form to date.
 22 **COMMISSIONER KOLBECK:** Thank you.
 23 **CHAIRMAN JOHNSON:** Mr. Gray, my recollection of the
 24 Commission's public comment meetings during the summer is that
 25 this document was discussed a number of times.

1 Is that your recollection as well?
 2 **THE WITNESS:** I do recollect it. I don't know if it
 3 was ever handed out or presented, but I do believe it was
 4 discussed.
 5 **CHAIRMAN JOHNSON:** Do you know if WEB Water ever
 6 requested these completed documents through via the discovery
 7 process?
 8 **THE WITNESS:** Not to my knowledge.
 9 **CHAIRMAN JOHNSON:** Do you know if Mr. Hohn as a pro se
 10 Intervener ever requested these completed documents during the
 11 discovery process?
 12 **THE WITNESS:** I don't know what a pro se Intervener
 13 is.
 14 **CHAIRMAN JOHNSON:** As an individual.
 15 **THE WITNESS:** Not to my knowledge.
 16 **CHAIRMAN JOHNSON:** I didn't know until last year.
 17 **THE WITNESS:** So I shouldn't feel bad.
 18 **MR. SMITH:** Commissioners done? Redirect?
 19 **MR. KOENECKE:** No.
 20 **MR. SMITH:** You're excused, Mr. Gray.
 21 **THE WITNESS:** Thank you.
 22 **(The witness is excused).**
 23 **(Discussion off the record)**
 24 **MR. SMITH:** Mr. Koenecke.
 25 **MR. KOENECKE:** We have nothing further, Mr. Smith.

1 **MR. SMITH:** I believe that -- unless the
 2 Commissioners, do you have any additional requests? Otherwise,
 3 I am having -- no. That's my stuff.
 4 I think that concludes the evidentiary part of the
 5 hearing.
 6 Is there any final comments or whatever from any of
 7 the parties?
 8 **Mr. Hohn.**
 9 **MR. HOHN:** Has the HCA map been submitted and reviewed
 10 here as evidence?
 11 **MR. SMITH:** It is in evidence is my recollection -- I
 12 think it is -- as part of exhibit -- well, I can't remember now.
 13 **MR. KOENECKE:** C.
 14 **MR. SMITH:** Exhibit I think it was 1C. So it is in
 15 evidence, yes.
 16 **MR. HOHN:** So if I were to look at document 1C on the
 17 table, would I see that map?
 18 **MR. SMITH:** I cannot tell you what's on the table.
 19 **MR. KOENECKE:** You would not. The portion of 1C
 20 that's been kept confidential is found in a box that
 21 Mrs. Athelm's been patiently delivering up and down the steps
 22 for the pendency of the proceeding.
 23 **MR. SMITH:** But it is in evidence.
 24 **MR. KOENECKE:** It is in evidence. It was listed on
 25 the sheet we put in the first day from the stipulation of the

1 admission, but that hasn't been set out on the table for public
2 review because not everybody has signed the confidentiality
3 agreement.

4 But you've signed it, and you've looked at the stuff.
5 It's part of the record, and it's been stipulated into evidence.

6 MR. HOHN: So let me see if I understand. It is
7 something that could be reviewed and discussed at this hearing
8 provided the parties that were discussing it had signed the
9 agreement of confidentiality?

10 MR. SMITH: Yes. I mean, that could have been done at
11 any time with respect to the people who, you know -- and this
12 has been explained since day one with respect to confidential
13 stuff.

14 With respect to things that are under seal, they've
15 got to be dealt with what we call in camera with persons who are
16 not subject to the confidentiality provisions not present.

17 MR. HOHN: So if I were to ask to see the HCA map and
18 have it reviewed at this hearing, is that acceptable to the
19 Hearing Officer?

20 MR. SMITH: Well, I mean, right now I guess, Mr. Hohn,
21 we'll have to hear from the other parties. You know, from a
22 procedural standpoint, again, you're not a lawyer, and I
23 understand that. I mean, your case is basically over at this
24 point in time.

25 But I guess I'm not sure what you're getting at.

1 You've signed the agreement so, yes, you have the right to look
2 at it.

3 CHAIRMAN JOHNSON: And, Mr. Smith, I guess a question
4 I might have for you to consider on your ruling or, Mr. Hohn,
5 just so you can help us understand a little better what you're
6 looking at, I mean, the maps are what they are. I mean, they
7 may be missing a particular location, and that would certainly
8 be something that the Applicant if this were approved would be
9 required to endeavor to get the most accurate information.

10 I'm not sure what a determination by the -- by an
11 individual Commissioner that, yes, indeed an HCA might have been
12 omitted by the Federal Government, I'm not sure how that helps
13 us in making a determination.

14 MR. SMITH: I don't know. It might -- what's your --
15 what are you looking for, and then we'll hear what the other
16 parties have to say.

17 MR. HOHN: Well, the way it's been explained to me
18 it's a very confidential document. And when I signed the
19 statement I took it literally as to what I could say or not say
20 about it. So if I start saying something I'm not supposed to, I
21 assume you will cut me off.

22 MR. SMITH: It's just specific locations that are on
23 that map are where we get into the confidentiality --

24 MR. HOHN: I won't get into specific locations.

25 MR. SMITH: And we can go there, but then we have to

1 remove persons who have not seen the document.

2 MR. HOHN: I don't think the question I want to raise
3 at this point would require that. I did look at the map.
4 John Smith and your staff were kind enough to help me see that,
5 allow me to view it, and I signed the agreement. And I didn't
6 get a copy of what I signed, but I remember it was fairly
7 serious what I signed.

8 MR. SMITH: I actually gave you a copy, Curt. It's
9 the addendum to the --

10 MR. HOHN: Well, going on then, I have questions as to
11 what's on the map. I mean, when I look at the map -- and I read
12 maps as part of my job, and I don't claim to know what
13 everybody's map means. That's the first item.

14 The second item is -- and it goes to what you're
15 saying, Mr. Johnson, is the adequacy. And the thing that when I
16 saw the map, the thing that came to mind was is that all that is
17 significant in South Dakota? It looked like it was lacking.

18 But it's hard to assess that without having somebody
19 that would also address what is there. It didn't look like
20 there was much there. And I don't want to delay this hearing.
21 I'd like to get home. And I have further to drive than some of
22 you so I don't want to delay it any longer than necessary.

23 But I would assume the Commissioners will look at the
24 map. If they haven't, they probably will. But looking at it
25 without getting into the detail, it just looked to me like it

1 was kind of scant.

2 MR. WHITE: Mr. Smith, if we could comment.

3 MR. SMITH: Please do.

4 MR. WHITE: We presented a witness, Ms. Heidi
5 Tillquist, with respect to the HCA maps. She testified for an
6 extensive period of time. She was cross-examined twice by WEB,
7 once by Mr. Rasmussen, once by Hohn.

8 There were many other witnesses who appeared and
9 discussed the HCAs. Never at any time during any of that
10 testimony did Mr. Hohn make his request to present the maps,
11 clear the room, have an in camera session. It just seems like
12 it's way late to be raising this issue now after those witnesses
13 have been up and down, and in fact some of them have already
14 headed home.

15 MR. SMITH: Mr. Tobin, did you want to weigh in at
16 all? You haven't been here during all of that so you probably
17 don't know what they said.

18 MR. TOBIN: Right. I guess I would be at this point
19 in time inclined to not oppose what Mr. Hohn is proposing.

20 MR. HOHN: Mr. Smith, might I respond?

21 MS. SEMMLER: I think staff has an opportunity.

22 I just think Mr. Hohn had his opportunity put on his
23 case just as we all did. And if we are going to open up this
24 hearing and start all over again, then we're all going to
25 start all over again. And that will serve no purpose. We all

1 had a chance to put on our case, and although we don't quite
 2 know what he's requesting, I find it procedurally
 3 inappropriate.
 4 MR. SMITH: I might point out one thing, Mr. Hohn.
 5 And I don't know what the Commissioners are going to do now at
 6 the close of the evidentiary portion of the hearing. This still
 7 doesn't end things in the normal course of major cases like
 8 this.
 9 The next phase of this then will probably be that the
 10 Commission will -- and the parties may request the opportunity
 11 to submit briefs. And may also elect -- usually with big cases
 12 like this we kind of like parties if they want to to submit
 13 proposed Findings of Fact and Conclusions of Law, and at the end
 14 of that is oral argument.
 15 And we've had an enormous amount of discussion and
 16 evidence presented from everybody from individual landowners to
 17 hydrology experts, hydrology exhibits -- several of those were
 18 your own exhibits -- that probably give us probably as much of
 19 the base evidence that we're going to have in this.
 20 And maybe an appropriate avenue for you to make your
 21 points in lieu of today -- again, like they say, because of the
 22 usual order of a case, their witnesses have gone. If we're at
 23 the point where what you're trying to do is take evidence that
 24 exists now in the record and then make arguments about the
 25 adequacy or inadequacy of the HCA maps, perhaps another avenue

1 for doing that might be via your final briefing and oral
 2 argument based on the evidence we have in the record today,
 3 which is extensive, on everything from Mr. Wade's testimony,
 4 your own testimony about WEB's intentions, the geological maps,
 5 Mrs. Anderson's testimony about the depth of her wells,
 6 testimony of -- now I can't remember her name, Brenda.
 7 MS. SEMMLER: Winkler.
 8 MR. SMITH: Winkler testifying about the certain
 9 potential for interconnection between some of those aquifer
 10 areas. I mean, we have a lot of that stuff in the record. And
 11 maybe you're at the point where the avenue might be argument
 12 related to what that evidence should show and what the
 13 Commission maybe should do rather than additional evidence per
 14 se.
 15 Is that a fair -- do you understand my point?
 16 MR. HOHN: I do. And I appreciate your summary. Two
 17 things I'd like to say. First of all, Mr. White lecturing me on
 18 not bringing this up sooner. You know, it's his evidence, and
 19 it's not sitting on the table, with all due respect.
 20 The second thing is it apparently is quite material
 21 because every time we turn around HCA is raised. And I'll leave
 22 it -- I'll take it under advisement what you've suggested and
 23 pursue that.
 24 But I want to say that I come from a city where
 25 Mr. Baum wrote the Wizard of Oz, and there's a small man behind

1 the curtain. And I would represent that HCA is a small man
 2 behind the curtain with a very large microphone. Thank you.
 3 COMMISSIONER KOLBECK: Could you explain -- I
 4 didn't -- is that appropriate? I don't get it.
 5 MR. HOHN: I'll send you the book.
 6 COMMISSIONER KOLBECK: I know all about the Wizard of
 7 Oz, and I don't like the innuendo. So I was wondering if you
 8 could explain --
 9 CHAIRMAN JOHNSON: You know, I might -- I don't want
 10 to -- maybe I'll just add this. I mean, I think the Applicant
 11 and staff have raised some very valid concerns about procedure.
 12 And I do think Mr. Smith has been quite liberal in his
 13 willingness to allow in evidence or questions to try to fill out
 14 the record even if perhaps it didn't follow the strictest
 15 procedure.
 16 And, you know, Mr. Hohn, if you had something specific
 17 and material, I could see more likely that the Commission would
 18 adopt, you know, a similar approach.
 19 To me, if we're just -- because right now we already
 20 have on the record that this proposed pipeline would be in the
 21 general vicinity of wetlands and community water system lines
 22 and shallow aquifers and cultural resources and environmental
 23 resources.
 24 If what you're seeking to do is just to have a further
 25 examination of those same issues, I at a personal level don't

1 think that that would add to the record.
 2 Now if you have something very specific, a substantial
 3 and significant resource that could be endangered by the
 4 pipeline that we have not yet addressed in the last seven days,
 5 then I think at least I would be more willing to take some time
 6 to evaluate that. But I haven't heard that that's the case.
 7 MR. HOHN: Could I respond, Commissioner? I don't
 8 feel I can speak to it, given the confidentiality document I
 9 signed. I don't believe I can -- given that document and saying
 10 you're not allowed to talk about the HCA report because of the
 11 federal designation --
 12 CHAIRMAN JOHNSON: Well, Mr. Smith has told me that we
 13 can talk as much as we want about stuff that's not on there.
 14 Now your counsel or you may counsel yourself that you would have
 15 a different interpretation of that. But if there's something
 16 big and important that's not on that map that should be, I think
 17 we can talk about that.
 18 And until Mr. Smith or somebody tells me otherwise, I
 19 don't even know that we necessarily would need to go into an in
 20 camera session to do that.
 21 I mean, what is it we're really nervous is out there
 22 that we haven't talked about at all?
 23 MR. HOHN: Well, and following that guidance, I'll
 24 just say these two things. I do not see on that map -- I'm
 25 speaking to what I don't see, not what I saw. I don't see some

1 of the very specific significant resources that are in that area
 2 that would be impacted addressed.
 3 And I think what TransCanada has done is limited it to
 4 within 1 mile, which we've had testimony that says it could be
 5 wider than that. That's one issue.
 6 The other is I saw no reference -- unless I'm reading
 7 the map wrong, and I could be reading the map wrong because --
 8 but it has a legend, and you try to follow the legend. If the
 9 attempt by the Department of Transportation was to protect oil
 10 and gas pipelines, I'm not sure I saw them on the map, for
 11 example.
 12 So I'll leave it at that. I appreciate your response,
 13 and I'm not trying to be difficult. I think what we will do and
 14 I've discussed this with Mr. Rasmussen and we will pursue the
 15 suggestion Mr. Smith mentioned and follow that area.
 16 But I guess for what it's worth as the Commission
 17 looks at that I think you might want to ask that question, is
 18 everything there that should be, in your opinion. And I think
 19 given all the confidentiality related to that at a national
 20 level, for whatever reason it's the one thing that never got
 21 presented here today without restriction -- or this week. And
 22 so it confuses me.
 23 I've never been involved in something where that's
 24 done. And I doubt you ever -- maybe you have, and, I don't
 25 know, maybe that's common, but has the Commission ever had a

1 situation where you were not able to look at the exhibit?
 2 So that's a question. And I guess what we will do is
 3 follow Mr. Smith's advice and take the next step available.
 4 CHAIRMAN JOHNSON: And just as a clarification, I
 5 think it's incredibly routine in large hearings like this -- and
 6 granted my sample size in only three years on the Commission is
 7 relatively small, but I can't remember a multi-day hearing where
 8 we didn't deal with confidential exhibits.
 9 What we did do is during the normal process of
 10 offering evidence people introduced the evidence, they asked for
 11 the room to be cleared, such was done, and we dealt with the
 12 information. And this is not secretive information. People can
 13 look at it. They just have to sign it. And the Commissioners
 14 have had access to it. And so have, to my knowledge, all the
 15 parties that were willing to sign that. So it's very routine
 16 for the Commission to deal with that kind of information.
 17 MR. SMITH: And I would want to clarify too just for
 18 anybody listening in out there that it isn't the South Dakota
 19 Public Utilities Commission that has elected to have this
 20 document have that status. It's not even the Applicant,
 21 TransCanada.
 22 MR. KOENECKE: Thank you for saying that, Mr. Smith.
 23 That's important. It's not the Applicant.
 24 MR. SMITH: It is the United States Department of
 25 Transportation. And I certainly trust everything the United

1 States Government does, but it's -- unfortunately, it's not
 2 something that whether they're right or wrong, I don't know that
 3 it's something we can do anything about. And it's just the way
 4 it is in this day and age at least for a while until I think
 5 there will come a time here in three or four or five more years
 6 when we come back to our senses after some of this stuff. But
 7 as of right now I don't think we can do anything about it.
 8 I wish we could, but unfortunately we can't. But on
 9 the other hand, I do want to clarify the HCA maps are in the
 10 record. They are in the record as a confidential exhibit and,
 11 therefore, they weren't put up there where everybody can see
 12 them. You can look at them. Your lawyers can look at them any
 13 time you want to, subject to the restrictions and the protective
 14 order.
 15 You can make argument -- and, again, if there's
 16 evidence related to the HCA maps that should be introduced that
 17 hasn't been, it probably should be. But by all means we've
 18 introduced -- there's just been a mountain of stuff. I mean,
 19 we've heard a huge amount of material on the presence of the
 20 drainage ditches along the way, water courses, of wetlands, of
 21 the Renzienhausen Slough and its outlet then into Sand Lake and
 22 the James River and all of those things, that the existence and
 23 the placement of BDM's rural water intakes, the City of Britton
 24 and on and on and on and on and on and on.
 25 And I think right now that's evidence. Those things

1 are where they are, and there's evidence of that. I think we
 2 might be right now at the point where it's not really evidence.
 3 And the HCA maps are what they are. It might now be arguing
 4 about whether or not the HCA map should contain things that
 5 we've heard evidence about and it doesn't. And that may be
 6 argument, not evidence, if that makes sense.
 7 And I would say this too. I mean, you're a party to
 8 the case, and WEB is as well. And if there comes a point where
 9 we realize that there's additional material evidence that we
 10 should have heard and didn't hear, parties to the case have the
 11 ability to make a motion to reopen this proceeding, and we can
 12 entertain that if there's a viable reason for doing that, if
 13 there's a material reason for doing that.
 14 I just think right now I think the point that the
 15 Applicant's made, and it's not a bad point, is given the normal
 16 flow of evidence in a case, they now believed the case was over
 17 following their rebuttal from an evidence standpoint, and
 18 they've let their witnesses leave.
 19 So it's kind of prejudicial to them to attempt to
 20 cross-examine people that aren't here, I guess is bottom line on
 21 that. Is that a fair statement?
 22 Again, I want to leave open the fact that you're a
 23 party, and if you believe there's evidence that hasn't been
 24 admitted that should be, by all means you have the right to make
 25 a motion to that effect.

1 MR. HOHN: Well, Mr. Smith, I agree with much of what
2 you just said. I would like to clarify I'm not in any way
3 saying that the Commission has any -- in any way placed a
4 restriction on HCA. The way it was presented it was a federal
5 restriction. And so you've dealt with that.

6 What I'm saying is -- and I can't get to the
7 specifics, but it looks like that map is very limited. And
8 maybe that's another arena that needs to be addressed.

9 I would state I guess for the record that that exhibit
10 we have serious reservations about it based on reviewing it and
11 reserve a right to pursue that in whatever avenues are
12 remaining.

13 I guess I was under the impression at some point the
14 room may be closed and they would present it, and maybe that was
15 a mistake on my part. But I don't want to delay the hearing any
16 longer. I just want to make that statement for the record.

17 MR. SMITH: Okay. And I appreciate that. And, again,
18 by all means, again, I could be wrong, but we've gone through so
19 much stuff it will be surprising to me if there's actual factual
20 evidence -- and you can argue -- I would caution everyone who's
21 going to make arguments involving any confidential exhibit that
22 those portions of briefs ought to be -- that discuss the
23 confidential stuff ought to probably -- those should be
24 segregated into the confidential portion of briefs.

25 And I might make one other comment too, and that is,

1 you know, there is an ongoing PHMSA permitting proceeding, you
2 know, DOT proceeding at the federal level, and certainly you as
3 an individual and WEB, you certainly have the ability and the
4 right to express your thoughts to -- at those agencies as well.
5 Because in the end they are the actual -- they're the actual
6 decision-makers with respect to that.

7 So with that -- pardon me, Mr. White.

8 MR. WHITE: Yeah. I apologize and I don't want to
9 belabor this but I don't want to leave the impression in the
10 room that WEB or Mr. Hohn was in any way precluded from making
11 an evidentiary presentation at this portion of the hearing with
12 respect to the HCA maps.

13 He reviewed the maps. He produced a number of
14 witnesses. There was a vehicle available to present testimony
15 on those issues in an in camera session. He was represented by
16 sophisticated counsel. He had every opportunity over the last
17 seven days to present that testimony and chose not to.

18 It was a deliberate choice on their part. And I don't
19 want the room or the Internet to reflect the suggestion that he
20 was in any way precluded from doing that. That was a decision
21 that he made.

22 MR. SMITH: With that, I think all parties have had a
23 chance to weigh in on this. We've left open the opportunity for
24 parties to make subsequent motions and to present arguments and
25 briefs regarding the evidence or prejudices that may have

1 occurred and they think may have occurred in the case.

2 And with that, at this point in time would the parties
3 want to and the Commission -- and we're all getting tired, I'm
4 sure, after many days of this.

5 Do you want to discuss posthearing procedure right now
6 and get some feeling for that right now so we all know where
7 we're going?

8 MR. KOENECKE: Yes. We're all here.

9 MR. SMITH: With that, I might start this time with
10 the -- well, let's see what the parties have to say first in
11 terms of -- I'll just tell you what we usually do would be to
12 first establish a briefing schedule. And that takes various
13 forms depending upon what the parties -- how they wish to
14 proceed on it.

15 That usually also includes at some point the
16 submission of Proposed Findings and Conclusions, and then at the
17 very end of that process we usually entertain oral argument.

18 With that very general structure, maybe we'll start
19 with the Applicant and get your thoughts on what we ought to do
20 in terms of a posthearing schedule.

21 MR. KOENECKE: We'd propose 30 days for simultaneous
22 briefs, 15 days or simultaneous reply briefs, and oral argument
23 at the Commissioner's option. Let them decide whether they
24 think there's something in the briefs that they want to hear
25 more about or ask about.

1 But I wouldn't propose that anybody be entitled to
2 oral argument as of right. Let the Commissioners decide that.
3 That would be our proposal.

4 And we will submit Proposed Findings and Conclusions.
5 I don't care if the other parties -- they can do that at their
6 own option, but we certainly intend to submit those.

7 MR. SMITH: And you say 30 days, and how much for your
8 reply was the suggestion?

9 MR. KOENECKE: 15.

10 MR. SMITH: Mr. Tobin.

11 MR. TOBIN: Mr. Smith, it may be nice to have a little
12 additional time. If the Commission chooses not to allow it on
13 the initial briefs, we would certainly appreciate it on the
14 reply briefs. I have a feeling we're going to have a lot of
15 information to sift through in the initial round of briefing.

16 So I'm not saying the time frames are unworkable, but
17 if additional time can be given, I would appreciate it on the
18 reply brief side of it.

19 MR. SMITH: Do you have separate comments from that,
20 Mr. Hohn?

21 MR. HOHN: No, I don't. I would defer to counsel.

22 MR. SMITH: Ms. Semmler.

23 MS. SEMMLER: Staff find Applicant's recommendation
24 workable.

25 CHAIRMAN JOHNSON: Mr. Tobin, you wanted additional

1 time for the reply round?
 2 MR. TOBIN: Yes.
 3 CHAIRMAN JOHNSON: Did you have anything in particular
 4 in mind?
 5 MR. TOBIN: You know, if we could get 20 days, that
 6 would probably be helpful as opposed to 15.
 7 CHAIRMAN JOHNSON: You know, my thought would be this
 8 Commission always likes to leave a little bit of room at the
 9 back end. I mean, if for some reason we were to find that after
 10 receiving the briefs that additional information was needed or
 11 witnesses or the Application submitted was not sufficient to
 12 make a ruling, boy, we'd sure want a little bit of time to be
 13 able to do that. But, of course, 15 to 20 is not -- you're not
 14 suggesting a huge difference.
 15 MR. TOBIN: No. I'm just suggesting we may need an
 16 additional week in there trying -- we don't have as many rows of
 17 people as they do.
 18 MR. SMITH: Mr. Hohn.
 19 MR. HOHN: Just a question as to transcript schedule.
 20 Do you have any idea?
 21 MR. SMITH: Well, that we've got to address too.
 22 Cheri Wittler, our reporter. Cheri, what's your prognosis?
 23 (Discussion off the record)
 24 MR. KOENECKE: Given the availability -- you've
 25 e-mailed both WEB Water and our side every night with the rough

1 drafts. I don't think it messes with the schedule at all.
 2 MR. HOHN: Are you saying the three weeks, or are you
 3 saying we should be operating off draft?
 4 MR. KOENECKE: That's exactly what I'm saying. You
 5 can go back and look at the parts of the draft about which
 6 you've got questions, but the overwhelming majority of what you
 7 and we have gotten every night is substantially useful.
 8 MR. HOHN: We've been told not to rely on that. I'd
 9 like to see the transcript. I think that's normal procedure.
 10 (Discussion off the record)
 11 CHAIRMAN JOHNSON: My thought would be that we could
 12 set 30 days, and if for some reason there was a very
 13 understandable delay that required the Commission pushing the
 14 initial brief deadline back, I would certainly think we'd be
 15 open to that. We're not looking to turn you into an indentured
 16 servant.
 17 (Discussion off the record)
 18 CHAIRMAN JOHNSON: Just so for everybody's knowledge
 19 January 15 is a Monday which would be 33 days, 33 or 34 days. I
 20 don't know whether -- December's got 31 days, but I don't know
 21 if you count today or not. It's a holiday. So if we go the
 22 16th of January --
 23 MR. GERDES: January 15 is a Tuesday on my calendar.
 24 CHAIRMAN JOHNSON: I'm looking at 2007 so I'm wrong,
 25 Dave.

1 MR. GERDES: I'm looking at 2008.
 2 CHAIRMAN JOHNSON: That's why you're right. So
 3 January 11 is a Friday. January 15 is a Tuesday.
 4 MR. KOENECKE: The Applicant would ask that the date
 5 set be January 11.
 6 MR. TOBIN: I think the 15th is appropriate.
 7 CHAIRMAN JOHNSON: Well, my suggestion for what it
 8 would be worth, Mr. Smith, and Commissioners would be that maybe
 9 we give a little more time on the front end, and then we don't
 10 necessarily need to push all the way back to 20 on the reply.
 11 Or do you want to go the 11th and then get your 20?
 12 I'm trying to split the bait here. Do you want more
 13 on the first round or more on the second round?
 14 MR. TOBIN: More on the second.
 15 CHAIRMAN JOHNSON: More on the second. So that would
 16 give us January 11. Two weeks. Then we could go January 28
 17 would give 17 days. 18 would be 29th. 19 days would be 30th.
 18 20 days would be the 31st.
 19 So for discussion's sake, Mr. Smith, I'd throw out the
 20 dates of January 11 and January 31.
 21 MR. SMITH: Well, I think, you know, again parties
 22 have comments on that?
 23 MR. KOENECKE: We stand by our original proposal.
 24 It's a sufficient amount of time.
 25 MR. SMITH: Mr. Tobin.

1 MR. TOBIN: And we stand by ours.
 2 MR. SMITH: I say it's time --
 3 COMMISSIONER HANSON: I stand by my Chairman.
 4 MR. SMITH: Pardon me? Oh, Ms. Semmler.
 5 MS. SEMMLER: I can get e-mails of all of those
 6 transcripts; correct? I don't have those. If I can get copies
 7 of the transcripts everyone else will be working off, I can work
 8 it.
 9 MR. SMITH: Okay. Well, I heard a suggestion from the
 10 Chairman. I think we're at the point where, Commissioners, this
 11 is one where we're no longer in the hearing, evidentiary hearing
 12 mode. I think it's your decision to make.
 13 COMMISSIONER HANSON: I went with the Chair.
 14 MR. SMITH: Do you want to make a motion and vote?
 15 COMMISSIONER HANSON: Go ahead.
 16 CHAIRMAN JOHNSON: Commissioners, I would move that
 17 the deadline for initial simultaneous briefs be January 11,
 18 which is Friday. That's in 2008. And that the deadline --
 19 simultaneous reply briefs be due on January 31, which is a
 20 Thursday in 2008.
 21 Motion has been made. No second is required. We'll
 22 proceed to discussion on the proposed agenda.
 23 MR. SMITH: I have one discussion item to bring up
 24 before you guys begin. With respect to Proposed Findings, would
 25 it be the pleasure of the Commission -- would you prefer to see

1 those in the first round or the second round in connection
 2 with --
 3 CHAIRMAN JOHNSON: Yeah. My thought would be first.
 4 And certainly if they need to make amendments in the reply brief
 5 if they feel they've messed something up, I could certainly --
 6 MR. SMITH: Well, the other thought I have is then it
 7 would allow the reply brief to address -- to make argument
 8 regarding Proposed Findings.
 9 Any discussion.
 10 MR. KOENECKE: That's acceptable.
 11 MR. TOBIN: I'd agree.
 12 MR. HOHN: Yes.
 13 MR. SMITH: Mr. Chairman, would you care to add that
 14 to your motion?
 15 CHAIRMAN JOHNSON: I think that's good. We'll
 16 certainly -- unless there's any objection, we'll amend the
 17 motion to require that Proposed Findings and recommendations to
 18 those parties that are going to offer them need to be made by
 19 the 11th and those that make Proposed Findings and
 20 recommendations on the 11th would be able to offer minor
 21 revisions on their reply brief if they felt it was necessary.
 22 MR. TOBIN: I'm sorry. Can I ask one question at this
 23 time, Mr. Commissioner?
 24 CHAIRMAN JOHNSON: Yes. Since it is an iterative
 25 process, anybody can make a comment.

1 MR. TOBIN: The oral argument portion I understand
 2 Applicant's position on it. I guess we're inclined at this
 3 point in time to let it be the Commission discretion as well.
 4 However, I think it would be our preference to present oral
 5 argument if given any consideration to that.
 6 CHAIRMAN JOHNSON: Yeah. I -- we could certainly add
 7 to the motion that the Commissioners, you know, could at
 8 their -- at anyone's option they could request that by a motion
 9 of the Commission. I don't know until I see the briefs.
 10 At this point I don't know that I'm dying for oral
 11 argument, but it may be that issues are raised in the briefs
 12 that are going to require some legal questions and I'll need to
 13 hear what the attorneys have to say about it.
 14 But, I mean, and the attorneys may want to correct me
 15 but to my understanding oral argument would essentially -- we're
 16 really going to want to get into the legal issues because we're
 17 not going to be uncovering new evidence in an oral argument
 18 so --
 19 Any further discussion, questions, or concerns on the
 20 proposed motion? Hearing none, we'll proceed to vote.
 21 Kolbeck.
 22 COMMISSIONER KOLBECK: Aye.
 23 CHAIRMAN JOHNSON: Hanson.
 24 COMMISSIONER HANSON: Aye.
 25 CHAIRMAN JOHNSON: Johnson votes aye. Motion carries

1 3-0. Mr. Smith, we'll pass it back over to you.
 2 MR. SMITH: Unless there are any final matters to
 3 bring before the Commission, we will stand adjourned.
 4 CHAIRMAN JOHNSON: And this is a good time to get this
 5 work done because, you know, normally if it's two parties, they
 6 can kind of agree to stuff in the interim, but because we have
 7 170 parties, sometimes an open meeting like this is a good time
 8 to get business done.
 9 Anybody else have anything else to --
 10 MR. KOENECKE: No. We have nothing further to
 11 discuss. Thank you.
 12 MR. HOHN: Mr. Johnson, I'd just like to compliment
 13 your staff for the great coffee service. We've been well cared
 14 for here. Thank you.
 15 MR. SMITH: And thank everyone who's been patient
 16 through this whole proceeding. It's been an emotional
 17 proceeding, and I thank everyone for their hanging in there and
 18 for civility. And, again, we stand adjourned.
 19 CHAIRMAN JOHNSON: As long as we're doing thank yous,
 20 I do think the staff we haven't seen much of today but has been
 21 really working very hard to get information that's filed in this
 22 docket up as soon as possible so it can be made available to
 23 parties.
 24 There's been some instances where that's been quite a
 25 burden to them personally working late nights so thank you to

1 them. And then Mr. Smith unfortunately has had the misfortune
 2 of having me in his left ear as he's been running this hearing.
 3 And I've sometimes been overly critical in your left ear from
 4 time to time. So my apologies for that. I think my colleagues
 5 and I would agree you've done a fine job.
 6 MR. SMITH: No apologies needed. And to the extent it
 7 was needed, it's accepted. The hearing is adjourned.
 8 (The hearing is adjourned at 4:30 p.m.)
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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF HUGHES)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered Professional
6 Reporter, Certified Realtime Reporter, and Notary Public in and
7 for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed shorthand
9 reporter, I took in shorthand the proceedings had in the
10 above-entitled matter on the 11th day of December 2007, and that
11 the attached is a true and correct transcription of the
12 proceedings so taken.

13 Dated at Pierre, South Dakota this 2nd day of January
14 2008.

15

16

17

18 _____
Cheri McComsey Wittler,
19 Notary Public
Registered Professional Reporter
20 Certified Realtime Reporter

21

22

23

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