

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

**KEYSTONE XL PROJECT
DOCKET HP09-001**

**PREFILED TESTIMONY OF BRIAN WALSH
ON BEHALF OF THE COMMISSION STAFF
SEPTEMBER 2009**

BEFORE THE PUBLIC UTILITIES COMMISSION STATE OF SOUTH DAKOTA

PREFILED TESTIMONY OF BRIAN WALSH

Q. State your name.

A. Brian Walsh

Q. State your employer.

A. State of South Dakota

Q. Specify the department for which you work.

A. Department of Environment and Natural Resources – Ground Water Quality Program.

Q. Explain your role and duties within your department.

A. I am a Hydrology Specialist with the Ground Water Quality Program. My role is to provide technical leadership, departmental oversight, and enforce laws and rules on projects impacting or potentially impacting groundwater resources of the state.

Primary duties include serving as the lead, department-wide coordinator for hazardous material pipeline projects in South Dakota, serve as the lead staff for the South Dakota Underground Pipeline Task Force, serve as the Governor's appointee on the Interstate Oil and Gas Compact Commission / Federal Energy Regulatory Commission Pipeline Task Force, responsible for developing source water assessments and preparing source water assessment reports for the statewide Source Water Assessment and Protection Program, direct and oversee the Pierre VOC assessment and remediation project, and serve as the lead project officer for multiple regulated substance release cases.

Q. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Staff of the South Dakota Public Utilities Commission (Staff).

Q. What is your involvement with TransCanada Keystone XL?

A. I am the department's project coordinator for the TransCanada Keystone XL project. I am responsible for maintaining a thorough knowledge of the project, representing the department at project meetings, serving as the primary department contact for the project, responding to data requests from TransCanada and their contractors, responding to public inquiries about the project, and coordinating department wide review and response to project documents (i.e., the Environmental Impact Statement).

Q. Did you provide comments during the EIS preparation process?

A. Yes, however, the EIS process is still ongoing. To date, the department has provided comments on the scope of the Draft EIS to the U.S. Department of State. When the Draft EIS is available, I will review the document, coordinate the department's response, and provide comment as needed.

Q. Tell about those comments.

A. On March 12, 2009 I submitted the department's comments on the scope of the Draft EIS to the U.S. Department of State (Attachment A). These comments are general in nature and cover items the department thinks should be addressed as part of the EIS.

Q. Do you believe those comments were adequately addressed in the EIS process?

A. I will not be able to determine if the comments were adequately addressed until the Draft EIS is available and the department reviews it.

Q. Did TransCanada or their consultants contact you for information?

A. Yes.

Q. If yes, what kind of information?

A. Information I provided to TransCanada's consultants included:

- GIS shapefiles showing Zone A source water protection areas located within 5-miles of the proposed centerline.
- Electronic copies of source water assessment reports for specific public water supply systems requested by TransCanada's consultants.
- Electronic copies of South Dakota Geological Survey Special Report 48 "Ground-Water Investigation for the City of Colome, South Dakota" and South Dakota Geological Survey Open-File Report 69-UR "Investigation of Ground-Water Resources for the Tripp County Water User District".
- GIS shapefiles showing Zone B source water protection areas located within 5-miles of the proposed centerline.
- Written descriptions of the nearest Zone B source water protection areas located downstream of major river crossings along the proposed route.
- GIS shapefiles showing the locations and availability of driller's logs for groundwater wells within 5-miles of the proposed centerline.
- Copies of driller's logs for specific wells, requested by TransCanada's consultant, located along the proposed route.
- GIS shapefiles showing the location of availability of driller's logs for groundwater wells less than 50 feet deep within 5-miles of the proposed centerline.
- GIS shapefiles showing the location of groundwater wells with water rights permits completed in unconfined aquifers located within 5-miles of the proposed centerline.
- The contact information for the South Dakota State Geologist, Derric Iles.
- The contact information for the department staff who work on TMDL issues.

Q. How many meetings have you had with TransCanada and/or their consultants?

A. Ten. In addition, I have had significant email communication and several conversations via telephone with TransCanada's consultants.

Q. What was the nature of each of those meetings?

A.

- May 21, 2008 – TransCanada's representatives came to Pierre to introduce the project to interested state agencies.
- June 23 – 30, 2008 – Attended a series of five public meetings hosted by TransCanada to provide project information to the public. Meetings were located in towns along the proposed pipeline route.
- January 14, 2009 – Attended an informational meeting for South Dakota Legislators in Pierre hosted by TransCanada's representatives.
- April 27 – 28, 2009 – Attended three public meetings hosted by the South Dakota Public Utilities Commission. Meeting locations are Winner, Philip, and Buffalo. At each meeting, TransCanada representatives presented information about the project and answered questions from the public.
- The email and telephone communications predominately concerned the information requests described in section 10 of my testimony.

Q. When would your agency have jurisdiction over Keystone XL?

A. The department would have regulatory authority over the proposed pipeline under the following circumstances.

- **Temporary Water Right Permit** – required for all water uses except reasonable domestic use. TransCanada would need a temporary water right permit to acquire water to hydrostatically test the proposed pipeline.

- **Surface Water Discharge Permits**
 1. Temporary Discharge Permit – required for any point source discharge to waters of the state. TransCanada would need a temporary discharge permit if hydrostatic test waters or construction dewatering waters are discharged to surface waters of the state.
 2. Storm Water Construction Permit – Oil pipelines are typically exempt from these permitting requirements. However, the state's surface water quality standards for suspended solids still apply. If the construction of the pipeline causes or contributes to violations of the surface water quality standards, the department could require TransCanada to obtain a permit.
- **Title V Air Quality Operating Permit** – These regulations would only apply if TransCanada installs backup generators at their pump stations that are required to meet 40 CFR Part 60, Subpart IIII.
- **Underground and Aboveground Storage Tanks** – any tank used to store petroleum or other hazardous regulated substance must comply with the state tank requirements. These requirements may apply if TransCanada uses tanks to store petroleum products during construction or if they have petroleum storage tanks at their pump stations.
- **Oil Spill Response Plan** – each crude oil pipeline operator issued a permit from the South Dakota Public Utilities Commission under the Energy Conversion and Transmission Facilities Act shall prepare an oil spill response plan. The pipeline operator must submit the plan to the

department prior to putting the pipeline in operation and is not effective without departmental approval.

- **Regulated Substance Release** – In the event of a regulated substance release during construction or operation of the pipeline, the department would have regulatory authority over the cleanup of the release. This authority includes the ability to take enforcement action against the responsible party and the ability to enforce the department's soil, groundwater, and surface water standards.

Q. Does this pipeline place any additional burden on your program?

A. No.

Q. Are there any geological and/or hydrological sensitive areas crossed by the Keystone XL pipeline?

A. Yes.

Q. Please briefly summarize each.

A. As of July 2008, the proposed pipeline route intersected the city of Colome's zone A, source water protection area in Tripp County. The city currently purchases its permanent water supply from the Tripp County Water Users District. The source water area intersected by the proposed pipeline is for the city's emergency back-up wells. These wells are approximately 55 feet deep and are completed in the unconfined, High Plains aquifer.

The proposed pipeline does cross other, unconfined aquifers in South Dakota.

For additional information on these aquifers, I defer to the testimony of the State Geologist, Derric Iles.

Q. Can the Applicant mitigate the risks associated with crossing those sensitive areas?

A. Yes.

Q. If so, please explain.

A. TransCanada can mitigate the risk associated with crossing the city of Colome's source water protection area by rerouting the pipeline to avoid the source water protection area.

Based on my review of TransCanada's application to the PUC, they have developed an alternative pipeline route (the Colome reroute) routing the pipeline around the city's source water area. To reduce the risk to the city's emergency back-up drinking water wells I recommend TransCanada incorporate the Colome reroute into the final pipeline route.

Concerning mitigation efforts for the other, unconfined aquifers crossed by the proposed pipeline, I defer to the testimony of the State Geologist, Derric Iles.

Q. Any other information of use to the commission or the public.

A. In March 2009, through a landowner email to the Governor's office, I became aware of a landowner concern about a proposed pump station in Jones County located approximately 600 feet from their house. Their primary concern was noise pollution from the electric pumps at the pump station. In this case, the landowner built the house after TransCanada selected the pump station location. To help address the landowner's concern I contacted TransCanada representatives to make sure they were aware of the situation and to see what could be done to alleviate the landowners concern. TransCanada informed me they were aware of the situation and would design the pump station to minimize operational noise. In addition, TransCanada was evaluating alternative sites for the proposed pump station that would be further away from the house. During a June 5, 2009 phone conversation, Brett Koenecke (TransCanada representative) informed me the pump station had been relocated and the issue has been resolved.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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March 12, 2009

Elizabeth Orlando
OES/ENV Room 2657
U.S. Department of State
Washington, DC 20520

Subject: South Dakota DENR Comments on the U.S. Department of State's Notice of
Intent to Prepare an Environmental Impact Statement for the Keystone XL
Project

Dear Ms. Orlando,

Enclosed for your review are the department's comments on the U.S. Department of State's
Notice of Intent to Prepare an Environmental Impact Statement for TransCanada's proposed
Keystone XL project. If you have any questions concerning these comments feel free to contact
me at 605.773.3296 or brian.walsh@state.sd.us.

Sincerely,

Brian J. Walsh
Hydrology Specialist
Ground Water Quality Program

Enclosure (1)

cc: Kara Semmler, SD PUC, Pierre
Nathan Solem, SD PUC, Pierre

Attachment A

**South Dakota Department of Environment and Natural Resources
Comments on the U.S. Department of State's Notice of Intent to Prepare an
Environmental Impact Statement and to Conduct Scoping Meetings**

General

1. Please continue to include the department on the Department of State mailing list for the Keystone XL project. The department contact for this project is:

Brian Walsh
Hydrology Specialist
SD DENR
523 E. Capitol Ave.
Pierre SD 57501
605.773.3296
605.773.6035 (fax)
brian.walsh@state.sd.us

2. Please provide the department with one hard copy of the DRAFT Environmental Impact Statement (EIS) and one hard copy of the Final EIS for the Keystone XL project.

Water Resources

3. The Draft EIS needs to evaluate the potential impacts of the project on public and private drinking water sources near the proposed pipeline. The evaluation needs to address the potential impacts to private wells and the potential impacts to public water supply system's source water protection areas.
4. The Draft EIS needs to evaluate the potential impacts to groundwater quality and quantity near the proposed pipeline. Specifically, the evaluation needs to address this issue where the project crosses surficial aquifers such as the Hell Creek, Fox Hills, and Ogallala aquifers.
5. The Draft EIS, as part of its evaluation of potential impacts to perennial and intermittent water bodies, needs to consider the impacts of the proposed project on South Dakota's rivers, streams, impoundments, stream classifications and surface water quality standards.

Oil and Gas Industry

6. The Draft EIS, as part of its evaluation of the potential impacts to existing land uses, needs to evaluate the potential impacts to South Dakota's existing crude oil and natural gas pipeline infrastructure.