BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

KEYSTONE XL PROJECT
DOCKET HP09-001

PREFILED TESTIMONY OF PAIGE HOSKINSON OLSON
ON BEHALF OF THE COMMISSION STAFF
SEPTEMBER 2009

BEFORE THE PUBLIC UTILITIES COMMISSION STATE OF SOUTH DAKOTA

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Q. State your name.

A. Paige Hoskinson Olson

Q. State your employer.

A. State of South Dakota, Tourism and State Development, State Historical Society

Q. State the program for which you work.

A. State Historic Preservation Office (SHPO)

Q. State the program goals and your specific role in the department.

A. The National Historic Preservation Act of 1966 is the foundation for the preservation work of the South Dakota State Historical Society (SDSHS). The State Historic Preservation Office (SHPO), a program under the SDSHS is charged to survey historic properties and maintain an inventory; identify and nominate properties to the National Register of Historic Places; advise and assist federal, state, and local government agencies in fulfilling their preservation responsibilities; provide education and technical assistance in historic preservation; develop local historic preservation programs; consult with federal and state agencies on their projects affecting historic properties; and advise and assist with rehabilitation projects involving federal assistance. My specific role is to monitor federally funded, licensed or permitted projects and to ensure historic properties are taken into consideration. I provide technical analyses, reviews and assistance to government agencies to ensure compliance with state and federal guidelines. I serve as the lead over the review and compliance function of SHPO.

Q. Explain the range of duties you perform.

A. From Class Specifications

Functions:

(These are examples only; any one position may not include all of the listed examples nor do the listed examples include all functions which may be found in positions of this class.)

1. Reviews construction work plans for federally funded projects to determine if they are in compliance with state and federal preservation laws.

a. Assesses impact of the project on historic properties and ensures those properties are given due consideration during the planning and implementation of projects.

b. Concurs or disagrees with determinations of eligibility for historic properties and the effect of proposed project on those properties within legally mandated timelines.

c. Reviews archaeological survey reports and documentation submitted by principal investigators and Senior Archaeologists to determine if proper methodology and standards established by state and federal government are met.

d. Works with agency officials to determine appropriate mitigation techniques when resources cannot be avoided.

e. Negotiates with and assists agencies in developing legal agreements to mitigate effects to historic properties and agreements to provide for alternative review and compliance procedures.

2. Provides technical assistance to government officials, contractors, lending institutions and agencies, and the general public to help them understand federal and state laws and to suggest compliance requirements.

a. Reviews survey reports developed for construction projects to determine if findings are in compliance with appropriate federal and state rules and regulations.

b. Monitors additions, deletions, or changes in interpretation of federal rules and regulations.

c. Writes and recommends guidelines for government agencies or federal fund recipients.

d. Compiles and analyzes data from a variety of sources to determine if agencies are having difficulty complying with requirements.

e. Maintains a record of all determinations about construction projects to be used as the basis of reports and future federal funding requests.

3. Prepares and writes comprehensive plans to manage cultural resources in South Dakota and establish guidelines to ensure that cultural resources are identified and protected.

a. Determines eligibility of archaeological sites and makes recommendations for their inclusion in the National Register of Historic Places and contributes research to a statewide comprehensive historic preservation plan.

b. Responds to requests from property owners, government agencies, and others to provide technical information about significance of sites.

4. Develops effective public information programs to inform South Dakota citizens about archaeology, pre-history, and the need to preserve South Dakota's cultural heritage.

a. Develops and manages public education programs to inform amateur archaeology groups, students, and the general public.

b. Designs and develops educational handouts, brochures and presentations.

c. Manages and participates in archaeological excavation projects to maintain a working knowledge of South Dakota pre-history and to mitigate the impact of development on significant sites.

5. Oversees the maintenance of a computerized system that tracks information relating to archaeological sites in order to provide an accurate and effective data base for research projects.

6. Provides work direction and training for review and compliance program staff to ensure projects are reviewed in an accurate, consistent and timely manner.

a. Establishes program priorities.

b. Assigns and reviews work.

c. Sets goals and recommends changes in work plans.

d. Develops office procedures.

e. Recommends the hiring of new staff.

f. Makes budget recommendations.

7. Performs other work as assigned.

Decision-making Authority:

Decisions include interpreting state and federal preservation laws, amount and type of guidance provided to state and federal agencies, whether to concur or not concur with an agency's determination of National Register eligibility for identified properties, and whether to concur or not concur with determination of the project's effect on historic properties, establishment of work priorities, goals and work plans for program staff; and content of handouts, brochures and presentations.

Decisions referred include final approval of Memoranda and Programmatic agreements; final content of presentation materials; budgetary recommendations and approval; and new staff hires.

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. State and Explain the South Dakota laws or Federal regulations that protect archaeological and historic resources in this state.

A. Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their project on historic properties. The federal regulations 36 CFR part 800 – Protection of Historic Properties explain how federal agencies take into consideration historic properties. In general, Section 106 is a four step process.

Step 1: Initiate Section 106 Process – the federal agency establishes if it has a federal undertaking. (A federal undertaking in general is any project, activity, or program funded, permitted or licensed by a federal agency. This also includes federal approval.) The agency determines if the federal undertaking has the potential to affect historic properties. (Historic properties are any prehistoric or historic district, site building, structure, or object listed on the National Register of Historic Places or eligible for listing on the National Register. This term includes properties of traditional religious and cultural importance to Indian tribes.) If the federal undertaking does not have the potential to affect historic properties the agency is done. If the agency determines the undertaking does have the potential to affect historic properties they go to step 2.

Step 2: Identify Historic Properties – the federal agency identifies historic properties within the project area or area of potential effects (APE). If after conducting the appropriate level of research the agency determines that no historic properties are located within the APE, the agency documents their findings and exits the process. If however, historic properties are identified the agency moves to the next step.

Step 3: Assess Adverse Effect – if historic properties are identified in the APE, the federal agency determines how the project will impact the identified

properties. If the project can be modified or conditions are imposed as to minimize the impact of the project on historic properties the federal agency may determine the project will have a "No Adverse Effect." If this is the case, the agency consults with the consulting parties, documents their decision, and exits the process. However, if the agency determines the project will have an "Adverse Effect" on historic properties the agency moves to the final step.

Step 4: Resolution of Adverse Effect – the federal agency, in consultation with other consulting parties, develops a memorandum of agree to mitigate the adverse effects.

Throughout this process the federal agency should be consulting with various parties as described in the regulations.

South Dakota Codified Law 1-19A-11.1 Preservation of historic property – Procedures. The state or any political subdivision of the state may not undertake any project which will encroach upon, damage or destroy any property included in the State or National Register of Historic Places until the Office of History has been given notice and an opportunity to investigate and comment on the proposed project.

However, in this case the National Historic Preservation Act supersedes SDCL 1-19A-11.1. The U.S. Department of State will be issuing a permit to TransCanada for the Keystone XL project. The U.S. Department of State is required to comply with Section 106 of the National Historic Preservation Act.

Q. Has Keystone XL, to the extent you are involved and know, complied with the process?

A. To the best of my knowledge the U.S. Department of State is in the process of complying with Section 106 of the National Historic Preservation Act.

Q. Are there any archaeological and or historically sensitive areas crossed by the Keystone XL pipeline?

A. The U.S. Department of State is in the process of determining if any archaeological and or historically sensitive areas will be impacted by the Keystone XL Pipeline. On July 7, 2009, we received a letter from Ms. Elizabeth Orlando, U.S. Department of State, and the report entitled "Level III Cultural Resource Survey for the Steele City Segment in South Dakota of the Keystone XL Project, Butte, Haakon, Harding, Jones, Lyman, Meade, Perkins, and Tripp Counties, South Dakota," prepared by SWCA Environmental Consultants. The report details the results of the archaeological survey for portions of the proposed centerline. However, there is a discrepancy between Ms. Orlando's letter and the survey report regarding the amount of survey conducted. The report indicates that 9 new sites were located during the current survey efforts and one known site was revisited. See below. The report does not include the identification of places of religious and cultural significance, or the identification of deeply buried archaeological deposits. To date, sites 39BU0039, 39HK0138, 39JN0051, 39LM0519 and 39PE0400 are located within the APE and will be affected by construction.

Q. Please briefly summarize each.

A. Ten archaeology sites and 15 isolated finds were identified during this portion of the survey. Isolated finds by definition are not eligible for listing on the National Register of Historic Places and are not taken into consideration. The ten archaeological sites are as follows:

39PE0400 – undated rock alignment

39MD0823 – prehistoric lithic scatter

39MD0824 – historic artifact scatter

39JN0051 – historic farm/ranch

39JN0052 – historic trash dump

39LM0518 – historic trash scatter

39TP0058 – historic artifact scatter

39BU0039 – prehistoric stone circle

39HK0138 – historic homestead

39LM0519 – historic burial place

We concurred with the U.S. Department of States findings for the following sites: 39MD0823, 39MD0824, 39JN0052, 39LM0518, and 39TP0058 should be considered not eligible for listing on the National Register of Historic Places, and therefore, do not need to be taken into consideration.

39JN0051 and 39LM0519 should be considered eligible for listing on the National Register of Historic Places, and therefore, need to be taken into consideration.

39LM0519 is a burial and should be avoided regardless of its eligibility.

39BU0039 and 39HK0138 should be considered unevaluated for listing on the National Register of Historic Places. These sites should be formally evaluated for listing.

39PE0400 was recommended as not eligible, but we disagreed with this assessment and requested additional information about this site.

Site 39BU0039, 39HK0138, 39JN0051, 39LM0519 and 39PE0400 are located within the APE and will be affected.

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

A. Because the identification efforts are not complete this has not been determined.

Q. If so, please explain.

A. The U.S. Department of State intends to conduct "phased identification and evaluation." A programmatic agreement will be developed to facilitate compliance with Section 106 of the National Historic Preservation Act. The agreement should establish mitigation measure to ensure the above sites and any new sites located within the APE are taken into consideration.

Q. Please provide any additional information that may be helpful or necessary for us to investigate further.

A. During an informal meeting with the consultants for TransCanada, but prior to establishment of the federal action, we discussed having an archaeologist monitor the open trench for deeply buried deposits during construction. We have since recommended that a geomorphologic study be conducted to identify areas with the potential for deeply buried archaeological deposits. We further recommended those areas be tested prior to construction, so if deposits are located, they can be taken into consideration as part of the identification process. We have received no response to our recommendations from the U.S. Department of State.