

# **TransCanada-Keystone Oil Will Sell For \$38 Million to \$58 Million Per Day They Should Treat Landowners Fairly And Pay For Any Leaks Or Property Damage**

Below is a list of things that WEB believes the SD Public Utilities Commission, Governor Rounds and the South Dakota Legislature Can Do, IF they are willing to provide a reasonable measure of protection for South Dakota landowners and rural water systems.

1. **Increase Pipe Wall Thickness:** TransCanada-Keystone could design their high pressure oil pipeline with wall thickness of 0.78 inch instead of 0.33 inch thick whenever this high pressure crude-oil pipeline route comes near a town, school, home, farm, business, park, rural water system or other public areas. With profits TransCanada and the oil industry are making on \$99 a barrel oil and \$3.00 gas they can well afford to do things right in South Dakota.

2. **Reserve Fund:** As part of their permit application approval, South Dakota should collect a fee on all oil that flows through the state through the TransCanada-Keystone Pipeline on a per-barrel basis to help cover the costs associated with spills, accidents, fires, environmental impacts, clean-up, and property damage. A \$0.15 per barrel toll on 590,000 barrels per day would generate \$88,500 per day or \$32.3 million per year. If TransCanada has a leak that damages the aquifer that the BDM Rural Water System relies on it could cost over \$22 million to bring in water from WEB or some other alternate source. If the WEB water lines serving Day County are contaminated by an oil spill, it would cost of \$11.5 million to replace the system. If productive farm land crossed by the pipeline is damaged by an oil spill the fund would be available to reimburse the landowner for their loss. **Oil selling for \$65 per barrel will generate \$38.5 million per day (\$14 billion/year) in sales for TransCanada and their partners and investors. Oil selling for \$99 per barrel will generate \$58.5 million per day (\$21.4 billion/year) in sales for TransCanada and their partners and investors.**

3. **No Eminent Domain:** South Dakota should not allow a **private company from a foreign country** to condemn and take the property of US citizens and South Dakota taxpayers by eminent domain. TransCanada-Keystone should be required to secure all easements from **willing sellers** without the threat of condemnation hanging over the landowners head. Condemnation of privately owned land should be discouraged and should be done only as a last resort and then only after all other alternatives and options have been exhausted. To assure that this happens, the PUC or the Governor and Legislature should establish a **process where landowners can appeal without having to go to court.** No land should be taken during this process. Rural water systems have installed thousands of miles of water lines using voluntary negotiated easements, without the use or threat of forced condemnation. Out-of-state out-of-country oil companies should be required to do the same. **No land acquisition activity should be allowed to begin until after a permit has been granted by the PUC and the legal appeal process has run its course.**

5. **Liability For Oil Spills, Cleanup & Damages:** TransCanada-Keystone should be required to reimburse landowners, adjacent property owners, water utilities, county government, township government and public lands and resources for any damage or impacts caused by an oil spill, pipeline construction or pipeline operations. Crop damage should be paid each year for the life of the pipeline because the heated oil will reduce crop. **This should be included as a condition of any permit issued by PUC.**

WEB Exhibit # 39

6. **Liability Insurance Coverage:** TransCanada-Keystone should be required to provide **proof of liability insurance coverage and a certificate of insurance** naming the State of South Dakota, counties, rural water systems, townships, utilities and individual landowners crossed by the pipeline as "**additional insured**" on the policy. The insurance policy should cover the operating life of the crude-oil pipeline, which is estimated by TransCanada at 50 years or more and should obligate all partners involved in the crude-oil pipeline, including LLC and LP.

7. **Post A Cash Bond:** South Dakota currently requires the owners of Homes take Gold Mine to post a cash bond to cover the costs of environmental impacts (See Exhibit 38). TransCanada and its partners should be required to do the same thing. By **posting a bond or cash payment** with the State of South Dakota, the Public Utilities Commission and/or the Department of Environment and Natural Resources could be used to cover the cost of clean-up of any oil spills or leaks that may occur during the 50-year life of the TransCanada-Keystone Oil Pipeline. The permit application TransCanada filed with the federal government predicts that there will be oil leaks and pipe failure in 5 to 7 years (*Pipeline Risk Assessment pg 3-2 and DNV—Frequency Volume Study, May 2006*). The "*Frequency Volume Study*" prepared by DNV Consulting, risk management consultants hired by TransCanada, states that 53% of the oil leaks could be pinhole leaks and that the monitoring systems **will not detect leaks of 1.5% pipeline volume which means 370,000 gallons per day** of oil could leak from the system and not be detected for days, months or even up to 90 days according to the DNV report. (See DNV Report Filed on the PUC website)

8. **Dispute Arbitration:** The South Dakota Legislature should give the Public Utilities Commission or some other state agency the authority and responsibility to **arbitrate or mediate easement acquisition disputes** in an effort to reach reasonable settlement before TransCanada or other oil and gas pipelines are allowed to use South Dakota eminent domain laws to condemn land held in private ownership. The process should include independent appraisers using methods to determine fair compensation for temporary and permanent right-of-way easements including loss of crop production, loss of groundwater supplies, and other costs. Some states that have more experience will oil pipelines use special commissions made up of landowners in the community. The rights of private property owners along the pipeline route in South Dakota should not be left to the mercy of professional land acquisition agents sent in to the state by a foreign oil company.

9. **Strengthen Oil Pipeline Safety Laws:** The South Dakota Legislature should strengthen South Dakota laws and establishing a process for **evaluating damage to land, water and resources** by a gas or oil spill and a method and process for determining compensation for property damage caused by a gas or crude oil spill. The plan should include an administrative appeals process available to landowners and property owners who are not satisfied with the result of negotiations with TransCanada-Keystone or other gas and oil pipeline builders and operators. The process should be at no cost to the landowner.

10. **Require Prior Engineering Plan Review & Approval:** The Department of Environment and Natural Resources (DENR) must approve construction plans for livestock feedlot lagoons, fuel storage containment and for all water and sewer systems before they are built in South Dakota. Why not the same requirement for high pressure crude-oil and gas pipelines? The Legislature should require that oil and gas pipeline companies crossing South Dakota present detailed **construction plans stamped by engineers licensed to do business in South Dakota** to the Department of Environment and Natural Resources for **prior review and approval** before any easements are secured and most certainly before any permits are approved by the PUC or any other agency.