



federal law and, with respect to the Oil Pollution Act, was within the province of the Environmental Protection Agency, and otherwise was in the province of PHMSA. (*Id.*) To the extent that the Tribe sought Keystone’s emergency response plan, Keystone also objected that the request was preempted by federal law under 49 CFR Part 194 and 49 U.S.C. § 60104(c), and that it sought information that was confidential and proprietary. (*Id.*)

First, the Tribe does not dispute in its motion that documents related to compliance with the Oil Pollution Act are within the province of the Environmental Protection Agency. Nor does it dispute that PHMSA has exclusive jurisdiction over its regulations found at 49 CFR Part 194. Instead, the Tribe states that Keystone wrongly relies on 49 U.S.C. § 60104(c) because that statute, which is part of the Pipeline Safety Act, does not govern Keystone’s emergency response plan. The document request, however, included “all documents prepared for the purpose of demonstrating compliance . . . with the PHMSA Facility Response Plan regulations, 49 CFR Part 194.” The cited regulation is titled “Response Plans for Onshore Oil Pipelines.” The cited statute contains a preemption provision: “A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c). Thus, the objection is proper based on the terms of the request.

Moreover, the Tribe is incorrect that the Emergency Response Plan is governed by the Clean Water Act. (Tribe’s Br. at 4.) The Tribe cites to 33 U.S.C. § 1321(j)(5). This section relates to a response plan that must be submitted to the President for “tank vessels and facilities,” which are statutorily defined as: “(i) A tank vessel, as defined under section 2101 of Title 46. (ii) An offshore facility. (iii) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.” 33 U.S.C. § 1321(j)(5)(B). The

Keystone XL Pipeline is not a “tank vessel” or an offshore or onshore facility as defined in Title 46, which deals with shipping. The definition of a tank vessel is found in 46 U.S.C. § 2101(39). The Tribe’s citation is therefore incorrect. The only Emergency Response Plan that Keystone will prepare is one to be submitted to PHMSA. It is not governed by the Clean Water Act.

Second, the Tribe’s suggestion that the Emergency Response Plan is not confidential is incorrect. The Commission recognized confidentiality in the Final Decision and Order in Condition 36, which provides that when Keystone files its ERP and Integrity Management Plan with PHMSA, it shall file the documents with the Commission, but can file the documents as confidential filings under ARSD 20:10:01:41. (Amended Final Decision and Order, Condition 36.) This is the same way that Keystone’s ERP for the Keystone Pipeline in Docket HP 07-001 was handled. It was filed as a confidential document on February 12, 2009. The ERP is also treated as a confidential document by PHMSA, and this confidentiality was recognized by the Department of State in the Final Supplemental Environmental Impact Statement. The ERP is addressed in Appendix I, and a redacted version of the ERP is attached. Appendix I includes this statement: “Note: The Emergency Response Plan has been made available for review by the general public. Accordingly, security sensitive, business confidential, person, and otherwise confidential information has been removed. A summary of the redacted information is included.” (Moore Aff. ¶ 3, Ex. B.)

Third, the Tribe’s argument that Keystone was obligated to seek a protective order under SDCL § 15-6-26(c)(7) is not well taken. Keystone was not legally obligated to seek a protective order from the Commission because: (1) the request seeks information that is not only confidential, but is within the exclusive jurisdiction of PHMSA; (2) non-confidential information related to the proposed emergency response plan is publicly available as part of

Appendix I to the FSEIS (Moore Aff. ¶ 3); and (3) the Commission has previously recognized, in this docket, the confidential nature of the Emergency Response Plan.

**b. Request No. 4.**

In its fourth document request, the Tribe sought all documents related to Keystone's Integrity Management Plan. The Commission has previously recognized in Condition 36 that the Integrity Management Plan is to be treated the same as the Emergency Response Plan. For all of the reasons stated in response to Request No. 3, the Tribe is not entitled to production of the Integrity Management Plan or "all documents" related to it.

**c. Request Nos. 5-9.**

In its fifth through ninth document requests, the Tribe sought all documents prepared or obtained for the purpose of demonstrating compliance by TransCanada with the Clean Water Act, the Endangered Species Act, "the environmental review of the Keystone XL Pipeline by the Department of State under the National Environmental Policy Act," the National Historic Preservation Act, and the Native American Graves Protection and Repatriation Act. Keystone stated different objections and answers to these requests, but the Tribe lumps them together in its motion, and contends that its reasonable follow-up to Keystone's initial responses was to narrow its requests through Interrogatory No. 51 in its second round of discovery. (Tribe's Br. at 5.) In Interrogatory No. 51, the Tribe asked Keystone to "[i]dentify every document, data compilation or tangible thing in your possession, custody or control relating to the Keystone XL Pipeline." (Tribe's Motion, Ex. D.) Keystone objected to Interrogatory No. 51 as overbroad and unduly burdensome and not likely to lead to the discovery of admissible evidence. (*Id.*) The Tribe challenges this response as well. The Tribe's arguments are without merit.

First, the Tribe ignores the answers that Keystone made and fails to explain why they were insufficient.

- With respect to compliance with the Clean Water Act (Request No 5), Keystone referred the Tribe to Section 4.3 of the FSEIS and provided a link. (Moore Aff. ¶ 2, Ex. A.) Keystone further stated that it has not “initiated any activity that requires compliance with the federal Clean Water Act and SDCL Chapter 34A-02,” and that therefore it has no responsive documents. Keystone further answered that it “received a General Permit for Temporary Discharge Activities on April 11, 2013 from the SD Department of Environment and Natural Resources,” and that the conditions in the general permit were in compliance with the Clean Water Act and SDCL Ch. 34A-02. (*Id.*) The Tribe does not explain how this answer is deficient, not responsive, or properly the basis of a motion for discovery sanctions.
- With respect to compliance with the Endangered Species Act (Request No. 6), Keystone provided a link to Section 3.8 of the FSEIS; answered that the FSEIS and the May 2013 Biological Opinion, found at Appendix H of the FSEIS were responsive; and that it had not yet started construction or operation. (*Id.*) The Tribe does not explain how this answer is deficient, not responsive, or properly the basis of a motion for discovery sanctions.
- With respect to compliance with the National Environmental Policy Act (Request No. 7), Keystone objected that the request was vague, overbroad, and unduly burdensome, but also answered that “[t]hese extremely voluminous documents are available on the State Department’s website for the Keystone XL Project.” (*Id.*) The Tribe does not explain how this objection and answer are deficient, not responsive, or properly the basis of a motion for discovery sanctions.
- With respect to compliance with the National Historic Preservation Act (Request No. 8), Keystone objected, but also answered that the issue was addressed in Section 4.11 of the FSEIS, and that cultural resources survey reports were listed in Section 3.11 of the FSEIS, “with results of the SD surveys detailed in Table 3.11-3.” (*Id.*) The Tribe does not explain how this answer is deficient, not responsive, or properly the basis of a motion for discovery sanctions.
- With respect to compliance with the Native American Graves Protection and Repatriation Act of 1990 (Request No. 9), Keystone answered that the issue was addressed in Section 3.11 of the FSEIS, and that the Unanticipated Discovery Plan for cultural resources can be found within the Programmatic Agreement in Appendix E of the FSEIS. (*Id.*) The Tribe does not explain how this answer is deficient, not responsive, or properly the basis of a motion for discovery sanctions.

Second, having ignored Keystone’s answers in its motion and brief, the Tribe states that it *narrowed* its requests by propounding Interrogatory No. 51, which was “for the purpose of

enabling the Tribe to be more selective and pare down its document requests.” (Tribe’s Br. at 5.) While Request Nos. 4-9 were specific to certain federal statutes, Interrogatory No. 51 asks Keystone to identify “every document, data compilation or tangible thing in your possession, custody or control relating to the Keystone XL Pipeline.” (Tribe’s Motion, Ex. D.) This is not a narrower request than the preceding document requests, and it is plainly overbroad and burdensome. Keystone obtained its permit from the Commission in 2010. Since then, it has been involved in a multitude of undertakings and proceedings, including: constitutional litigation in Nebraska; building the Gulf Coast Segment and the Houston Lateral; state permitting in all of the states where the Keystone XL Project is located; land acquisition efforts in Nebraska, Montana, and South Dakota; the process of obtaining a Presidential Permit from the Department of State, a process that started on September 19, 2008; and all of the related review processes that were part of the Final Environmental Impact Statement, the Supplemental Environmental Impact Statement, the Final Supplemental Environmental Impact Statement, the Biological Opinion from the United States Fish and Wildlife Service, and the Independent Engineering Assessment. To suggest that Keystone identify every document in its possession related to these and other activities covering at least seven years is obviously overbroad and burdensome.

Third, the Tribe’s understanding of the scope of discovery is wrong. The Tribe states that “[d]iscovery is permitted for all relevant material, whether or lead to admissible evidence at trial [sic].” (Tribe’s Br. at 6.) To the contrary, SDCL § 15-6-26(b)(1) states that “[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” The

standard is relevant evidence that appears reasonably calculated to lead to the discovery of admissible evidence. Interrogatory No. 51 does not meet this standard.

Fourth, the Tribe argues that Keystone cannot reasonably refer it to publicly available information, as with the FSEIS. (Tribe's Br. at 6.) This argument is based on a 1979 Pennsylvania decision in which the court noted that it might be difficult for the plaintiff to obtain the records that were requested from the Quebec Asbestos Mining Association, a foreign entity, and the records sought were only those already in the defendant's possession. *Petruska v. Johns-Manville*, 83 F.R.D. 32, 35 (E.D. Pa. 1979). That principle has no application to an unlimited request for every document in Keystone's possession related to the Keystone XL Pipeline, when Keystone reasonably responded by providing a link to a United States government website containing responsive documents.

For all of these reasons, the Tribe's motion based on Keystone's responses, including its answers, to Document Request Nos. 5-9 and Interrogatory No. 51 is without merit.

## **2. Interrogatory No. 30 and Interrogatory No. 52.**

In Interrogatory No. 30, the Tribe asked Keystone to describe in detail all circumstances surrounding the external corrosion of pipe that is described on page 5, finding 68, in Keystone's tracking table of changes. Keystone answered:

Base Keystone experienced a localized external corrosion wall loss due to DC stray current interference from foreign utility colocation which caused sacrificing significant amounts of protective current to other pipelines in the shared Right-of-Way. This adversely affected CP current distribution to the Keystone line. This anomaly was found during proactive and routine high resolution in-line inspection. This issue has been reviewed, remediated and updates to the CP design where colocation occur have been implemented. In South Dakota specifically, no such location exists for colocation of multiple pipelines in a shared Right-of-Way. However, Keystone has applied these updates to its design and existing CP "construction bridge to energization" plan to address potential for DC stray current interference due to foreign utility crossings and paralleling utilities.

(Tribe's Motion, Ex. B.) The Tribe then served Interrogatory No. 52, asking Keystone to identify the foreign utility involved. (*Id.*) Keystone answered that the request was not relevant and not likely to lead to the discovery of admissible evidence, since the situation occurred in a shared pipeline corridor and no similar situation exists in South Dakota.

In its brief, the Tribe states that "Keystone neither objected nor answered the question." (Tribe's Br. at 7.) That statement is false, as evidenced by the objection cited above. Keystone asked the Tribe's counsel for clarification of this statement, but no response was received.

(Moore Aff. ¶ 4, Ex. C.)

Keystone's objection that the identity of the foreign utility is not likely to lead to the discovery of admissible is warranted. Keystone has disclosed the incident, fully described the circumstances, and established that no similar situation exists in South Dakota. The Tribe states that it seeks the identity of the foreign utility for impeachment purposes (Tribe's Br. at 7), but that statement is not explained. The identity of the other utility involved is not relevant to the Keystone XL Pipeline in South Dakota given the different circumstances.

### **3. The sanctions that the Tribe seeks are unwarranted.**

Even if the Tribe were entitled to any of the discovery challenged in its motion and brief, it would not be entitled to the sanctions that it seeks. As the Tribe acknowledges, a sanction excluding testimony is warranted only in circumstances involving a willful refusal to comply with the discovery rules. (Tribe's Br. at 7). Here, Keystone has not acted in bad faith, has not violated any order of the Commission, and has not willfully denied discovery. Rather, Keystone has asserted limited and proper objections to interrogatories or document requests that are not consistent with the rules of civil procedure or with which it simply cannot comply, like the request to identify all documents related to the Keystone XL Pipeline. As indicated, Keystone

answered over 850 interrogatories in 30 days in the first round of discovery and provided extensive information. (Moore Aff., March 30, 2015, ¶ 3.) The Tribe challenges only a handful of Keystone’s responses to its 54 interrogatories and 15 document requests.

The facts do not warrant exclusion of evidence or testimony, and certainly do not support dismissal of Keystone’s certification petition, which the Tribe requests. That remedy is reserved for the most extreme refusal to engage in discovery. As stated in the case cited by the Tribe, “[l]ess drastic alternatives [to exclusion] should be employed before sanctions are imposed which hinder a party’s day in court and thus defeat the very objective of the litigation, namely to seek the truth from those who have knowledge of the facts.” *Haberer v. Radio Shack*, 1996 S.D. 130, ¶ 22, 555 N.W.2d 606, 611 (quoting *Mabuhat v. Kovarik*, 382 N.W.2d 43, 45 (S.D. 1986)). *See also Dudley v. Huizenaga*, 2003 S.D. 84, ¶ 14, 667 N.W.2d 644, 648 (“When considering a discovery violation, the severity of the sanction must be tempered with a consideration of the equities. Less drastic alternatives should usually be employed before imposing the severest sanction.”).

### **Conclusion**

Keystone’s objections to the Tribe’s discovery requests were measured and reasonable. The Tribe’s motion is based on inaccuracies and is not supported by the law. Keystone respectfully requests that the Tribe’s motion be denied.

Dated this 7<sup>th</sup> day of April, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

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### CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Opposition to Standing Rock Sioux Tribe's Motion for Discovery Sanctions, to the following:

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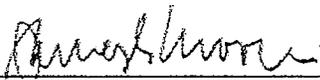
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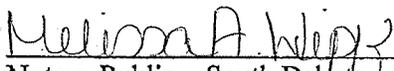


answered the question.” A copy of my e-mail is attached as Exhibit C. Mr. Capossela did not acknowledge or respond to my e-mail.

Dated this 1<sup>st</sup> day of April, 2015.

  
James E. Moore

Subscribed and sworn to before me  
this 1<sup>st</sup> day of April, 2015.

  
Notary Public – South Dakota  
My commission expires:  
My Commission Expires  
Sept. 13, 2017

#### CERTIFICATE OF SERVICE

I hereby certify that on the 1<sup>st</sup> day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the foregoing Affidavit of James E. Moore in Opposition to Standing Rock Sioux Tribe’s Motion for Discovery Sanctions, to the following:

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## REQUEST FOR PRODUCTION OF DOCUMENTS

1. All exhibits to be introduced at the hearing in this matter.

ANSWER: Keystone has not yet identified hearing exhibits, but will disclose them as required by the PUC.

2. The resumes of all persons to be called as witnesses or whose testimony will be filed by TransCanada.

ANSWER: Responsive documents are attached as Keystone 1341-1374.

3. All documents prepared for the purpose of demonstrating compliance by TransCanada with the Oil Pollution Act of 1990, codified at 33 U.S.C. §1321, and the PHMSA Facility Response Plan regulations, 49 CFR Part 194, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request seeks information that is outside the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information that is governed by federal law and is within the province of The Environmental Protection Agency for the Oil Pollution Act, and PHMSA.. The PUC's jurisdiction over the emergency response plan is preempted by federal law. *See* 49 C.F.R. Part 194; 49 U.S.C. 60104(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone.

4. Integrity Management Plan and all other documents prepared for the purpose of demonstrating compliance by TransCanada with the Pipeline Safety Act, 49 U.S.C. §60101 *et seq.* and the implementing regulations, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of the PHMSA. The PUC's jurisdiction over pipeline safety is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the Integrity Management Plan would commercially disadvantage Keystone.

5. All documents prepared or obtained for the purpose of demonstrating compliance by TransCanada with the Clean Water Act, 33 U.S.C. §§1251-1387, and the implementing regulations, and SDCL Chapter 34A-02, in the construction and operation of the Keystone XL Pipeline.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 4.3, which is publicly available at <http://keystonepipeline->

[xl.state.gov/finalseis/](http://xl.state.gov/finalseis/). Without waiving the objection, the Project has not started construction; therefore, Keystone has not initiated any activity that requires compliance with the federal Clean Water Act and SDCL Chapter 34A-02. Therefore, no documents have been prepared to date. Keystone has received a General Permit for Temporary Discharge Activities on April 11, 2013 from the SD Department of Environment and Natural Resources. The conditions contained within this general permit are in compliance with the federal Clean Water Act and SDCL Chapter 34A-02.

6. All documents prepared or obtained for the purpose of demonstrating compliance with the Endangered Species Act, 16 U.S.C. §§1531-1544, and the implementing regulations, and SDCL Chapters 34A-8 and 34A-8A, in the construction and operation of the Keystone XL Pipeline.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 3.8, which is publicly available at <http://keystonepipeline-xl.state.gov/finalseis/>. Without waiving the objection, the following documents demonstrate the Project's compliance with the Endangered Species Act and SDCL Chapters 34A-8 and 34A-8A during the planning phase of the Project route in South Dakota:

The Department of State FSEIS (2014) and the May 2013 Biological Opinion which is Appendix H of the Department of State FSEIS (2014).

Keystone has not initiated construction or operation of the Project.

7. All documents relating to the environmental review of the Keystone XL Pipeline by the Department of State under the National Environmental Policy Act, 42 U.S.C. §4231 *et seq.*

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. These extremely voluminous documents are available on the State Department's website for the Keystone XL Project. <http://keystonepipeline-xl.state.gov/>

8. All documents prepared or obtained for the purpose of demonstrating compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§470-470x-6.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 4.11, which is publicly available at <http://keystonepipeline-xl.state.gov/finalseis/>. Without waiving the objection, cultural resources survey reports are listed in Section 3.11 of the Department of State FSEIS (2014), with results of the SD surveys detailed in Table 3.11-3.

9. All documents prepared or obtained for the purpose of demonstrating compliance with the Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. §§3001-3013.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 3.11, which is publicly available at <http://keystonepipeline-xl.state.gov/finalseis/>. Without waiving the objection, the Unanticipated Discovery Plan for cultural resources can be found within the Programmatic Agreement in Appendix E of the Department of State FSEIS (2014).

10. All documents relating to communications or meetings with the Standing Rock Sioux Tribe or other Indian Tribes in the United States or Canada.

OBJECTION AND ANSWER: This request is overlybroad and unduly burdensome to the extent that it goes beyond the Standing Rock Sioux Tribe. *See* Keystone documents 1121-1340.

11. Construction quality assurance plan or related documents for the Keystone XL Pipeline.

ANSWER: In its Application to the South Dakota Public Utilities Commission dated October 2009 Keystone stated that to ensure compliance with the regulations, standards, and Keystone's internal quality standards, Keystone will implement a quality

control and quality assurance plan (QC/QA Plan). The QC/QA Plan will establish technical inspection policies and procedures during manufacturing and construction, and will delineate the duties and responsibilities of each QC/QA inspector assigned to the Project. Keystone's QC/QA Plan includes periodic audits by manufacturing and construction management to confirm that inspections are being properly performed and documented. (SDPUC Application, October 2009, page 8.)

As part of its continuous improvement cycle Keystone is in the process of revising its QC/QA plans that would be used on the Keystone XL project based on Lessons Learned from recent completed projects. Impacting the final revision of the quality management plan for the Keystone XL project will be the two Special Conditions recommended by PHMSA in addition to the 57 Special Conditions listed in the FSEIS (Appendix B, Potential Releases and Pipeline Safety.)

The two additional Special Conditions include:

1. Keystone would develop and implement a Quality Management System that would apply to the construction of the entire Keystone XL project in the U.S. to ensure that this pipeline is—from the beginning—built to the highest standards by both Keystone personnel and its many contractors; and
1. 2. Keystone would hire an independent Third Party Inspection Company (TPIC) to monitor the construction of the Keystone XL project. PHMSA must approve the TPIC from among companies Keystone proposes. Keystone and PHMSA would work together to develop a scope of work to help ensure that all regulatory and technical EIS conditions are satisfied during the construction and commissioning of the pipeline project. The TPIC would oversee the execution and implementation of the Department-specified conditions and the applicable pipeline safety regulations and would provide monitoring summaries to PHMSA and Keystone concurrently. Keystone would address deficiencies or risks identified in the TPIC's assessments.<sup>3</sup>

Footnote <sup>3</sup>: In response to a data request regarding this TPIC condition, Keystone responded: "Keystone agrees to hire an independent Third Party Inspection Company (TPIC) to monitor field construction activities of the Keystone XL project. Keystone understands that it will work jointly with PHMSA to define the scope of work, identify qualified companies and prepare a Request for Proposal. PHMSA will select the qualified TPIC and manage the work of the TPIC. PHMSA will retain authority for its mandate on the project, while the TPIC will provide supplementary resources to PHMSA staff to field monitor, examine, audit and report conditions as specified by DOS and applicable pipeline safety regulations. Keystone will address deficiencies as directed by PHMSA." (FSEIS, Appendix B, page 27; repeated at FSEIS, Appendix Z, page 95.)

At this time a Quality Management System to comply with additional PHMSA Special Condition No. 1 is not available, and the selection of a TPIC to comply with additional PHMSA Special Condition No. 2 has not been initiated.

12. Water sampling quality assurance plan or related documents for water samples taken in relation to construction of the Keystone XL Pipeline.

ANSWER: The Project has not started construction; therefore, Keystone has not initiated any activity that requires water sampling. Additionally, Keystone has not received any permits that require water sampling for quality assurance. If water sampling is required per agency regulation or permit requirement, Keystone will sample in an appropriate methodology to be compliant with all applicable regulatory statutes or permit conditions.

13. Operations manual or related documents for the Keystone XL Pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the

exclusive province of the PHMSA. The PUC's jurisdiction over the operations manual is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the operations manual would commercially disadvantage Keystone.

14. All letters, correspondence, emails or instant messages to and from the South Dakota Public Utilities Commission, its employees, attorneys or agents, since January 1, 2008.

OBJECTION AND ANSWER: This request is overlybroad and unduly burdensome. Without waiving the objection, all such materials are available on the Commission's website under Docket Nos. HP 09-001 and HP 14-001, except for communications by Keystone's public liaison directly to PUC staff.

15. All advertisements that have been purchased by TransCanada relating to the project in any South Dakota media, such as television, radio, newspaper, billboard or other.

OBJECTION: This request is overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b).

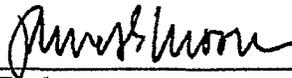
OBJECTIONS

The objections stated to Cheyenne River Sioux Tribe's Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 6<sup>th</sup> day of February, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By



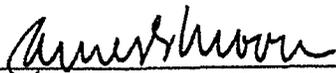
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of February, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Standing Rock Sioux Tribe's First Request for Production of Documents, to the following:

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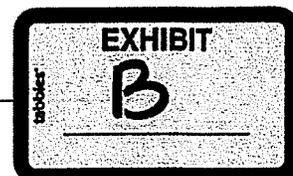
## **APPENDIX I**

### **Spill Prevention Control and Countermeasure Plan and Emergency Response Plan**

This Appendix includes the following documents:

- Spill Prevention Control and Countermeasure Plan
- Emergency Response Plan Redaction Summary
- Emergency Response Plan (ERP)

Note: The Emergency Response Plan has been made available for review by the general public. Accordingly, security sensitive, business confidential, personal, and otherwise confidential information has been removed. A summary of the redacted information is included.



**Melissa Wipf**

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**From:** James E. Moore  
**Sent:** Wednesday, March 25, 2015 9:33 AM  
**To:** pcapossela@nu-world.com  
**Cc:** William Taylor; Melissa Wipf  
**Subject:** FW: TransCanada Keystone Pipeline, HP 14-001  
**Attachments:** TC responses to SRST 2nd set of FPD (01856662x9FB59).PDF; TC responses to SRST 2nd set of IRFPD (01856651x9FB59).PDF; TC's Supplemental Responses to SRST First IRFPD. (01856639x9FB59).PDF; second round discovery production HP 14-001 PUC (01856501x9FB59).PDF

Mr. Capossela,

We received and reviewed your motion for discovery sanctions this morning. You state that Keystone did not object to or answer Interrogatory No. 52. Our responses to your second set of interrogatories were served on March 10, as indicated below. The objection to Interrogatory No. 52 contained in our responses to your second set of interrogatories is attached as an exhibit to your motion. Can you please clarify the statement on page 7 of your brief that "Keystone neither objected nor answered the question, in violation of South Dakota law"? Thanks.

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**Subject:** TransCanada Keystone Pipeline, HP 14-001

On behalf of James E. Moore, please see attached.

Melissa A. Wipf  
Legal Administrative Assistant

