

provided on February 6. Keystone responded to the letter on April 7. (Moore Aff. ¶ 4.) The Tribe's letter was not intended as much to facilitate discovery as to set up a motion to compel.

1. Interrogatory No. 10. The Tribe seeks the identity of the people who have conducted civil surveys related to the Keystone XL Pipeline. Keystone objected that the information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Keystone also answered by identifying the persons or entities who conducted the American Burying Beetle Habitat Assessment, the Biological Surveys, the Phase I ESA Sureys, the cultural resource surveys, and the paleontological surveys. (Moore Aff. ¶ 3, Ex. A.) The Tribe's motion entirely ignores the response that Keystone provided, and fails to explain how it is deficient. The Tribe argues only that the persons who conducted the surveys may possess evidence relevant to Keystone's compliance with the permit conditions. The Tribe does not argue any deficiency in the surveys that have been conducted, so there is no showing that the persons responsible would provide evidence of non-compliance. The Tribe has not established that it is entitled to any additional information.

2. Interrogatory No. 13. The Tribe seeks the identity of environmental inspectors "that Keystone has incorporated into the CMR." Keystone responded that "no Environmental Inspectors have been identified or hired, because the construction of the Project has not yet started." (Moore Aff. ¶ 3, Ex. A.) The Tribe does not acknowledge this response, so its motion fails to explain how it is insufficient or what more information Keystone could provide.

3. Interrogatory No. 15. The Tribe seeks information whether any contractors hired by Keystone to construct any pipeline owned or operated by Keystone have received any communication from any agency or regulatory body about safety concerns or violations regarding any United States pipeline. Keystone objected that the request was not reasonably

calculated to lead to the discovery of admissible evidence and that it sought information not in Keystone's custody or control. The Tribe argues that it wants to know what Keystone knows about contractor safety, but with respect to the Keystone XL Pipeline, there is no construction schedule and no contractors have been hired. The request therefore cannot be answered as to Keystone XL, and is otherwise not relevant.

4. Interrogatory No. 16. This is the same request as Interrogatory No. 15, but limited to pipelines in Canada. Keystone's objection is valid for the same reasons.

5. Interrogatory No. 21. The Tribe seeks detailed identifying information about the persons who conducted cultural surveys for the Keystone XL Pipeline. Keystone objected, but also responded by stating that SWCA Environmental Consultants performed the survey work, and the two principal investigators involved were Scott Phillips and Paul Murphey. (Moore Aff., ¶ 3, Ex. A.) Again, the Tribe fails to acknowledge the response, and so fails to explain why the identification provided was insufficient.

6. Interrogatory No. 32. The Tribe sought, among other information, the location of the construction camps in South Dakota. Keystone provided a detailed response to this interrogatory, which the Tribe fails to acknowledge in its motion. Nevertheless, Keystone agreed in response to the Tribe's letter dated April 1, to provide specific latitude and longitude information for the camps. This issue should be resolved.

7. Document Request No. 2. The Tribe seeks "all documents related to environmental and hydrological surveys." Keystone objected that the request is overbroad and burdensome. The Tribe narrowed its request to the Keystone XL project, but does not explain how its request for "all documents" related to the surveys is narrowly tailored and not overbroad and burdensome.

8. Document Request No. 3. The Tribe seeks “all documents relating to cultural and historic surveys, training, and response plans. In response to Keystone’s objection, the Tribe again narrowed the scope to the Keystone XL project, but the request for “all documents” is still overbroad and burdensome. The Tribe does not explain why the information publicly available in the FSEIS related to cultural and historic surveys is insufficient for its purposes.

9. Document Request No. 4. The Tribe seeks “all documents” relating to requiring permits, inside and outside South Dakota. Keystone objected that the request is overbroad and burdensome. The Tribe does not explain how “all documents” relating to permitting is a reasonable request. Moreover, there is a table of required permits in Table 1.9-1 of the FSEIS. It lists nine pages of required permits.

10. Documents Request No. 6. The Tribe seeks “all documents constituting Keystone’s emergency response plan.” Keystone objected on a variety of grounds, including that Keystone is not required to submit the emergency response plan to PHMSA until sometime close to when the Keystone Pipeline is placed into operation. The emergency response plan is addressed in Appendix I to the FSEIS, to which Keystone provided a link in its discovery response. (Moore Aff., ¶ 3, Ex. A.) In other words, Keystone does not yet have an emergency response plan for the Keystone XL Pipeline. A redacted version of its emergency response plan for the Keystone Pipeline is contained in Appendix I to the FSEIS, so the template for the emergency response plan is clear. The Tribe does not explain why this response is insufficient.

11. Document Request No. 7. The Tribe seeks “all documents” supporting the changes to the Findings of fact identified in Keystone’s tracking table filed with its certification. Keystone objected that the request was overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, and stated that many documents supporting the

changes were identified in the tracking table. The Tribe does not explain how its request is reasonable.

12. Document Request No. 8. This request was made in the Tribe's second round of discovery requests, but it is the same as Document Request No. 7 in the first round. Keystone's objection is valid for the same reasons.

Conclusion

The Tribe's motion to compel is without merit. Keystone provided substantial information to the Tribe in written discovery, and stands on its valid objections, which the Tribe has failed to refute. Keystone respectfully requests that the motion be denied.

Dated this 10th day of April, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th 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 Response to Yankton Sioux Tribe's Motion to Compel, to the following:

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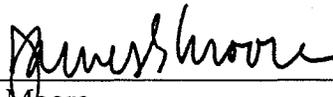
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/s/ James E. Moore
One of the attorneys for TransCanada

4. Keystone responded to the Tribe's letter dated April 1, 2015, by e-mail on April 7, 2015. A copy of the e-mail is attached as Exhibit B.

Dated this 10th day of April, 2015.



James E. Moore

Subscribed and sworn to before me

this 10th 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 10th day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Affidavit of James E. Moore in Response to Yankton Sioux Tribe's Motion to Compel Discovery, to the following:

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20:10:01:01.02. Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

INTERROGATORIES

1. State the name, current address, and telephone number of the person answering these interrogatories.

ANSWER: Given the extremely broad scope volume of more than 800 discovery requests received by Keystone in this docket, a range of personnel were involved in answering the interrogatories. Keystone will designate the following witnesses with overall responsibility for the responsive information as related to the Conditions and proposed changes to the Findings of Fact, which are identified in Appendix C to Keystone's Certification Petition: Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; Meera Kothari, P. Eng., 450 1st Street, S.W., Calgary, AB Canada T2P 5H1; David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

2. State the name, current address, and telephone number of any person, other than legal counsel, who Keystone talked with about answering these interrogatories, who assisted Keystone in answering these interrogatories, or who provided information that Keystone relied on in answering these interrogatories.

ANSWER: Given the extremely broad scope volume of more than 800 discovery requests received by Keystone in this docket, a range of personnel were involved in answering the interrogatories. Keystone will designate the following witnesses with overall responsibility for the responsive information as related to the Conditions and proposed changes to the Findings of Fact, which are identified in Appendix C to Keystone's Certification Petition: Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; Meera Kothari, P. Eng., 450 1st Street, S.W., Calgary, AB Canada T2P 5H1; David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

3. Identify each witness that you will or may call as a fact witness or expert witness in any evidentiary hearing or trial of this matter. For each individual, identify and provide the name, business address, and business telephone and the name of his or her employer and/or other organization(s) with which he or she is associated in any professional capacity; the substance of the facts to which he or she is expected to testify and the substance of the opinions to which he or she is expected to testify; the individual's profession or occupation, educational background, specialized training, and employment history relevant to the proposed testimony; and the individual's previous publications within the preceding 10 years; and all other cases or proceedings in which the witness has testified as an expert within the preceding four years.

ANSWER: Keystone will offer prefiled direct testimony from the following persons, each of whom will testify to the changes identified in Keystone's tracking table for that person's area of expertise:

- (1) Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (403) 920-2546; Project purpose, Overall description; Construction schedule; Operating parameters; Overall design; Cost; Tax Revenues
- (2) Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; (832) 320-5916; same; CMR Plan, Con/Rec Units, HDD's
- (3) Meera Kothari, P. Eng., 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (832) 320-5190; same; Design and Construction; PHMSA compliance
- (4) David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (403) 920-6019; Demand for the Facility

(5) Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; (850) 385-5441; Environmental Issues; CMR Plan, Con/Rec Units, HDD's

(6) Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528; (970) 449-8609; High Consequence Areas, Spill Calculations

4. Identify any other names that Keystone conducts business under, in the United States and Canada.

ANSWER: None.

5. Pursuant to Condition Two of the Commission's Amended Final Decision and Order, has Keystone received any communications from any regulatory body or agency that may have jurisdiction over the project which alleges that Keystone has failed to comply with any applicable permits, law, or regulation?

ANSWER: No.

6. Pursuant to Condition Two, has Keystone a permit by any regulatory body or agency that may have jurisdiction over the construction, maintenance, or operation of any pipeline located in the United States or Canada ever been denied, revoked, or suspended by the regulatory body or agency?

ANSWER: No.

7. Pursuant to Condition Two, has Keystone been given notice by any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in the United States or Canada alleging that Keystone

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has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

ANSWER: No.

8. Pursuant to Condition One, please identify all required permits that Keystone has applied for within the State of South Dakota regarding the use of public water for construction, testing, drilling, or temporary discharges to waters of the state and temporary discharges of water from construction dewatering and hydrostatic testing.

ANSWER: Keystone has submitted a Notice and Intent and Certificate of Application Form to Receive Coverage Under the General Permit for Temporary Discharges and a Temporary Water Use Permit. Other permits, as required, will be filed closer to the time period of construction.

9. Pursuant to Condition Six, identify the most recent depiction of the Project route and facility locations as they currently exist as compared to the information provided in Exhibit TC-14.

ANSWER: Maps showing changes to the route since the permit was granted are attached as Keystone 0470-0583.

10. Pursuant to Condition Six, identify the dates, addresses, phone numbers, emails, and names of person(s) responsible for conducting surveys, addressing property specific issues and civil survey information.

OBJECTION AND RESPONSE: The identity of persons conducting civil surveys is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, American Burying Beetle Habitat Assessment was conducted by W. Wyatt Hoback, Department of Biology, University of Nebraska at Kearney; Biological Surveys (i.e., habitat, wetland delineations) were conducted by AECOM (Scot Patti was the principal investigator) and SCI (Scott Billing was the principal investigator); Phase I ESA Surveys were conducted by AECOM (Brian Bass was the principal investigator); Biological Surveys (i.e., threatened and endangered species, noxious weeds, reclamation) were conducted by Westech (John Beaver was the principal investigator); Cultural resources surveys were conducted by SWCA Environmental Consultants (principal investigator was Scott Phillips); the paleontological surveys were conducted by SWCA Environmental Consultants (principal investigator was Paul Murphey).

11. Pursuant to Condition Six, does Keystone recognize the Yankton Sioux Tribe, a federally recognized sovereign Indian Nation, as a "local governmental unit?"

ANSWER: Because the Project does not cross Tribal land and because the Yankton Sioux Tribe is a sovereign nation, Keystone does not consider the Tribe to be a "local governmental unit" as referenced in Condition 6.

12. Condition Seven requires Keystone to appoint a public liaison officer. Accordingly, has Keystone:

1. Appointed such public liaison officer, and if so please provide such officer's:

- a. Name;
- b. Address;
- c. Phone number; and
- d. Email address.

2. Directed such public liaison officer to contact and or consult with the Yankton Sioux Tribe?

ANSWER:

1.a. Sarah Metcalf's appointment was approved by the PUC by order dated June 2, 2010, in an order which is a matter of public record.

1.b. PO Box 904, Aberdeen, SD 57402.

1.c. 1-888-375-1370

1.d. smetcalf12@gmail.com

2. No. The project does not cross Yankton Sioux lands and Keystone does not consider the Tribe to be a "local government" in the vicinity of the project as stated in Amended Permit Condition 7.

13. Pursuant to Condition Thirteen, identify and provide the phone number, address, and email address of every each environmental inspector that Keystone has incorporated into the CMR.

OBJECTION AND ANSWER: The identity of environmental inspectors is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Without waiving the objection, no Environmental Inspectors have been identified or hired, because the construction of the Project has not yet started.

14. Pursuant to Condition Thirty-Seven, has Keystone ever been found non-compliant with any other permits, from any state regarding the Keystone XL Project?

ANSWER: No.

15. Pursuant to Conditions One and Two, have any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in the United States.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL

15-6-26(b). It also seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

16. Pursuant to Conditions One and Two, have any contractors hired by Keystone to construct any pipeline owned or operated by Keystone or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in Canada.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It also seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

17. Pursuant to Condition Forty-Four, what steps has Keystone or any of its affiliates taken to ensure that the cultural and historic resources of the Yankton Sioux Tribe are protected?

OBJECTION AND ANSWER: Condition 44 refers to paleontological studies. Notwithstanding 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. Any further discussions regarding these surveys would be addressed through the course of government to government consultation with the DOS when the Yankton Sioux were afforded the opportunity to not only review those studies but also participate in the surveys themselves.

18. Pursuant to Condition Forty-Four, how many times has Keystone contacted the Yankton Sioux Tribe?

1. If Keystone did make such contact please provide the following:

- a. Name(s) of the person(s) notified;
- b. Title of the person(s) notified;
- c. The physical address of the person(s) notified;
- d. The telephone number(s) of the person(s) notified; and
- e. The means by which Keystone made notification, i.e. written,

oral, electronic, etc.;

ANSWER: A precise record of the number of contacts with the Yankton Sioux Tribe, either through the body politic or through tribal members does not exist. Typically contacts came through the TransCanada Tribal Liaison staff. See Keystone documents 1304-1340 that document some of the contacts. With respect to Condition 44, there may not have been any paleontological specific contacts.

19. Pursuant to Condition Forty-Four, has Keystone made any new cultural and/or historic surveys along the route of the Project since its original permit was granted?

OBJECTION AND ANSWER: Condition 44 refers to paleontological studies, not cultural studies. However, all 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.

20. According to Keystone's original application, Keystone began cultural and historic surveys in May 2008 and at that time it had found several pre-historic stone circles were uncovered. Please provide a detailed description of these sites, including location.

ANSWER: These sites are addressed during the course of government to government consultation with the DOS. Site locations are confidential and cannot be disclosed outside of the consultation process.

21. Pursuant to Condition Forty-Four, please provide the name, address, phone number, and email of all persons involved in any cultural or historic survey conducted by Keystone. In addition, please provide a detailed description of all pertinent professional training that qualifies the surveyor as a professional who meets the standards of the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 FR 44716, September 29, 1983).

OBJECTION AND ANSWER: The identity of the surveyors is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objection, SWCA Environmental Consultants performed the survey work. The cultural resources principal investigator was Scott Phillips; the paleontological principal

investigator was Paul Murphey. Both individuals meet the SOI standards for their particular field.

22. Pursuant to Condition Forty-Four, has Keystone made any attempt to contact the Yankton Sioux Tribe Business and Claims Committee, its officers, or its Tribal Historic Preservation Office? If so, please provide the following:

- a. Name(s) of the person(s) contacted;
- b. Title of the person(s) contacted;
- c. The physical address of the person(s) contacted;
- d. The telephone number(s) of the person(s) contacted; and
- e. The means by which Keystone made contact, i.e. written, oral, electronic, etc.;

ANSWER: See response to interrogatory no. 18 above.

23. Pursuant to Condition Forty-Four, provide a detailed description of cultural and historic training that Keystone provides to its construction personnel.

ANSWER: Training material developed by Keystone will be finalized and available for distribution to the construction personnel after the inventory phase is complete and prior to construction.

24. Pursuant to Condition Forty-Four, does Keystone or any of its affiliates recognize that if approved and constructed, the Keystone Pipeline will travel through the

identified Indian Country territory from the Fort Laramie Treaty of 1851 and 1868, and as such will likely encounter undiscovered cultural and/or historic sites?

ANSWER: Keystone recognizes that the KXL Pipeline will travel through territory considered in the Treaties of Fort Laramie of 1851 and 1868. Keystone does not believe that any part of its route as currently permitted passes through Indian Country or across tribally owned lands. Keystone recognizes the possibility that undiscovered cultural and/or historic sites may be found in the course of construction. Keystone believes Conditions 43 and 44, and the provisions provided for therein, suitably accommodate cultural and paleontological resource discoveries. Tribal monitors will be hired by Keystone to monitor designated areas during ground disturbing activities relating to construction to assist in managing previously undiscovered cultural and/or historic sites that are found in the course of construction and in complying with the unanticipated discoveries plan.

25. Pursuant to Condition Forty-Four, does Keystone plan to consult with the Yankton Sioux Tribe and its General Council, Business and Claims Committee, and its Tribal Historic Preservation Office in the future?

ANSWER: Condition 44 applies to paleontological discoveries. Condition 43 applies to unanticipated discoveries. See the answer to Interrogatory 24 above.

26. Pursuant to Conditions One and Two, does Keystone recognize and acknowledge that the Yankton Sioux Tribe has federally protected Winters Doctrine water rights and that these rights apply to any permit application to use water for the construction, operation or maintenance of the Keystone Pipeline project?

ANSWER: Keystone recognizes the so-called Winters Doctrine arising from *Winters v. The United States*, 207 U.S. 564 (1908) and its progeny. Keystone does not believe that the Yankton Sioux Tribe's Winters Doctrine water rights are affected by Keystone's use of water for construction, operation, or maintenance.

27. Pursuant to Conditions One and Two, what steps, if any, has Keystone or any of its affiliates taken to ensure that the Yankton Sioux Tribe's federally protected Winters Doctrine water rights are be protected?

ANSWER: Keystone does not believe that the Yankton Sioux Tribe's Winters doctrine water rights are affected by the use of water for the construction, operation, or maintenance of the Keystone Pipeline.

28. Pursuant to Conditions One and Two, are any waterways situated on or near the Pipeline route subject to designation under the Wild and Scenic River Act of 1968? If so, identify each of the waterways.

OBJECTION AND RESPONSE: To the extent that it seeks information on the Pipeline route outside South Dakota, this request is not relevant or reasonably likely to

lead to the discovery of admissible evidence. Without waiving the objection, the Project route does not cross any waterways that are subject to designation under the Wild and Scenic River Act of 1968. There are no waterways that are subject to designation under the Wild and Scenic River Act of 1968 near the Project route in South Dakota. An evaluation of Wild and Scenic Rivers as per related to the Project is found on page 4.3-24 of the Department of State FSEIS (2014).

29. Pursuant to Conditions One and Two, are there any land areas along or near the Keystone Pipeline route that have been designated as critical habitat under the Endangered Species Act? If so identify each of the land areas.

OBJECTION AND RESPONSE: To the extent that it seeks information on the Pipeline route outside South Dakota, this request is not relevant or reasonably likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no lands along or near the Project route in South Dakota that are designated as critical habitat under the Endangered Species Act. Endangered species are discussed in Section 4.8 of the Department of State FSEIS (2014).

30. Pursuant to Conditions One and Two, are there any land areas along or nearby the Keystone Pipeline route that have any Endangered Species located in that area? If so, identify the land areas and the endangered species.

OBJECTION AND RESPONSE: To the extent that it seeks information on the Pipeline route outside South Dakota, this request is not relevant or reasonably likely to lead to the discovery of admissible evidence. Without waiving the objection, the following federally-listed threatened or endangered species have the potential to occur along the Project route in South Dakota: interior least tern; piping plover; rufa red knot; whooping crane; and the American burying beetle. Section 4.8.3 of the Department of State FSEIS (2014) and Appendix H, Biological Opinion in the Department of State FSEIS (2014) discusses the potential occurrence of these federally-listed threatened and endangered species along the Project route in South Dakota and Sections 4.8.3 and 4.8.4 and Appendix H of the Department of State FSEIS (2014) discusses the potential impacts and conservation measures the Project will implement to protect listed species.

31. Pursuant to Condition Twenty-Three, will employees of Keystone or any of its contractors or subcontractors enter the exterior boundaries of the Yankton Sioux Reservation during construction of the Project? If so, for what purposes?

ANSWER: Employees of Keystone or any of its contractors or subcontractors will not enter the exterior boundaries of the Yankton Sioux Reservation during construction.

32. Pursuant to Conditions One, Two, and Thirty-Six, identify the location of all equipment staging areas, construction staging areas, construction camps, and housing

camp in South Dakota that will be used for emergency response, construction, and/or temporary housing.

OBJECTION AND RESPONSE: The request for the location of equipment and construction staging areas is not relevant and not likely to lead to the discovery of admissible evidence. It is confidential for reasons related to security. Keystone currently has not determined the specific locations that will be used for emergency response, but as required by Permit Condition 10, will timely consult with the appropriate agencies. Without waiving the objection, emergency response locations will be determined prior to the project going into service and will be determined in accordance with Federal response requirements.

Construction

Keystone has leased 11 pipe yards and 6 contractor yards in South Dakota. Pipe yards are planned in Harding, Meade, Butte, Haakon, Jones and Tripp counties. The 6 contractor yards are located in Harding, Meade, Haakon and Tripp counties. Each pipe yard is approximately 30 acres in size.

Temporary Housing

Some areas within Montana, South Dakota, and Nebraska do not have sufficient temporary housing in the vicinity of the proposed route for all construction personnel working in those areas. Temporary work camps would be constructed to meet the housing

needs of the construction workforce in these remote locations. A total of eight temporary construction camps would be established. It is currently anticipated that four construction camps would be needed in Montana (McCone, Valley [two], and Fallon counties), three camps would be required in South Dakota (Tripp, Harding, and Meade counties), and one camp would be required in Nebraska (Holt county). Figure 2.1.5-1 shows the anticipated location of six of the eight camps. The locations of two camps are unknown at this time (one in Montana and one in Nebraska). The final number and size of camps would be determined based on the time available to complete construction and to meet Keystone's commercial commitments. All construction camps would be permitted, constructed, and operated consistent with applicable county, state, and federal regulations. (FSEIS, page 2.1-31)

33. Pursuant to Condition Thirty-Six and Changed Finding of Fact No. 107, identify the contractor or company that is responsible for providing emergency response services.

ANSWER: TransCanada has agreements/contracts with corporations such as the National Response Copr. that meet the Oil Spill Response Organization (OSRO) requirements (Keystone ERP, Appendix I to the FSEIS).

The resources will be secured from a Company approved contractor.

34. Pursuant to Changed Finding of Fact No. 107, provide a breakdown of crime statistics (including violent crimes, sexual crimes, and drug and/or alcohol-related crimes) for areas in which temporary housing camps have been located for construction of comparable projects showing crime rates both before and during construction of said projects. Please also identify the source of this data and the method used to collect this data.

OBJECTION: This request seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business. It is also overlybroad and unduly burdensome.

35. Pursuant to Changed Finding of Fact No. 107, identify the precautionary measures Keystone has or will implement at the temporary housing camps to protect the surrounding area from crime resulting from the temporary influx of construction workers at the temporary housing camps.

ANSWER: TransCanada Keystone will implement policies and procedures that all residents will be required to comply with during their residency at the camp. Violations may lead to removal from the camp or the appropriate level of disciplinary action. TransCanada will liaise with and engage law enforcement if any issues arise from the man-camps, as appropriate. TransCanada will consider augmenting local law enforcement staffing impacts resulting from camp operations.

Ref: FSEIS 4.10-13

Each camp site would be fully fenced and have a guard house at a single entrance. A contract security officer manning the guard house would be provided on a 24/7 basis. In addition, at all times there would be at least one additional roving security officer supplemented with off-duty law enforcement personnel, as needed. Local law enforcement agencies would also respond to violent, criminal, or illegal activities.

36. Pursuant to Changed Finding of Fact No. 107, identify the protocols and guidelines that will be utilized to respond to reports of crime in or near the temporary housing camps that reportedly involve temporary construction workers or other employees of Keystone or of its contractor or subcontractor.

ANSWER: Any reports of crime or criminal activity in or near temporary housing camps will be reported to local law enforcement for investigation and follow up. TransCanada is committed to cooperating with and assisting law enforcement with their investigation, where appropriate.

Ref: FSEIS 4.10.33

Each camp site would be fully fenced and have a guard house at a single entrance. A contract security officer manning the guard house would be provided on a 24/7 basis. In addition, at all times there would be at least one additional roving security officer

supplemented with off-duty law enforcement personnel, as needed. Local law enforcement agencies would also respond to violent, criminal, or illegal activities.

37. Pursuant to Condition Twenty-Three and the changed Finding of Fact Number Forty-One, will any of Keystone's construction equipment or crew access the Project from trust land? If so, has Keystone received the necessary consent of the United States government to access trust land on the Yankton Sioux Reservation or the affected Reservation?

ANSWER: Keystone does not cross any trust land with access to the Project in South Dakota.

38. Pursuant to Condition Twenty-Three, has Keystone made contact with or otherwise taken any action to plan for road closures which may affect the Yankton Sioux Tribe? If so, does Keystone plan to notify, coordinate or otherwise consult with the Yankton Sioux Tribe?

ANSWER: Keystone does not expect any road closures will affect the Yankton Sioux Tribe, but if such road closures should occur, Keystone will consult with the Yankton Sioux Tribe regarding same.

39. Pursuant to Condition Twenty-Three, has Keystone made contact with or otherwise taken any action to plan for emergency response which may affect the Yankton

Sioux Tribe? If so, does Keystone plan to notify, coordinate, or otherwise consult with the Yankton Sioux Tribe?

ANSWER: Yes, the Yankton Sioux Tribe will be notified if the tribe is affected by an incident. The final version of the Keystone Pipeline Emergency Response Plan (ERP) is complete and complies with 49 C.F.R. Part 194. The Keystone ERP will be amended to include Keystone XL. A redacted version of the ERP is found at Appendix I of the FSEIS.

40. Pursuant to Condition Two, please provide the following information with respect to each instance of tribal consultation with the Yankton Sioux Tribe referenced in Appendix E of the Final Supplemental Environmental Impact Statement.

- a. Name(s) of the Tribal official(s) or other person(s) contacted;
- b. Title of the Tribal official(s) or other person(s) contacted;
- c. The physical address of the Tribal official(s) or other person(s) contacted;
- d. The telephone number(s) of the Tribal official(s) or other person(s) contacted;
- e. The means by which contact with the Tribe was made, i.e. written, oral, electronic, etc.;

f. Whether any employee, official, or other agent of Keystone was present during the particular instance of consultation and if so, the name and contact information for that individual(s); and

g. Whether Keystone actively or otherwise participated during the particular instance of consultation.

ANSWER: Tribal consultation is the responsibility of the Department of State.

41. Pursuant to Conditions 6 and 43 how much land along Keystones proposed route for the KXL Project has yet to be TCP surveyed. If any, identify the land.

ANSWER: The status of TCP surveys can be found in Table 3.11-8 of the Department of State FSEIS (2014). The Yankton Sioux Tribe's report was received and accepted in March and April 2011. Any outstanding issues would be addressed through the course of government to government consultation with the DOS.

42. Pursuant to Condition 2, how many other state permits and federal permits are pending or not yet received by Keystone for the Keystone XL project.

ANSWER: The Presidential Permit is currently pending before the United States Department of State. Permit authorization from the USACE under Section 404 of the Clean Water Act has not yet been sought.

43. Pursuant to Conditions 6 and 43, have any tribes surveyed the land along the proposed route for the KXL Project? If so, which tribes and for what portion of the route, respectively?

ANSWER: Yes. The route surveys performed are summarized in Keystone documents 1151-1169.

44. Pursuant to Condition 10, has Keystone yet commenced a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area? If so, please describe the program and any steps taken in furtherance of meeting Condition 10. If not, when does Keystone plan to do so?

ANSWER: No. Keystone will commence such a program not later than six months before commencing construction.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents that Keystone intends to offer as exhibits at the evidentiary hearing in this matter.

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

2. All documents relating to environmental and hydrological surveys. Changed Finding of Fact Number Forty-One.

OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). The request is unlimited in time and does not refer to any specific project.

3. All documents relating to cultural and historic surveys, training, and response plans. Condition Forty-Four.

OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). The request is unlimited in time and does not refer to any specific project.

4. All documents relating to required permits, both in South Dakota and outside South Dakota, including permit applications which were denied, revoked, or suspended.

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

5. All documents related to Interrogatory No. 40, including but not limited to any correspondence between any employee, official, or other agent of Keystone and any other party pertaining to each instance of consultation and any notes or other documents generated by any employee, official, or other agent of Keystone pertaining to each instance of consultation.

ANSWER: As indicated in the answer to number 40, consultation is the responsibility of the Department of State.

6. All documents constituting Keystone's Emergency Response Plan.

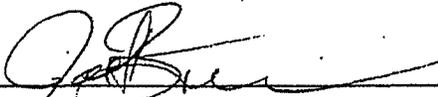
OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law, which has exclusive jurisdiction over issues of pipeline safety. *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 emergency response plan would commercially disadvantage Keystone. In addition, Keystone is not required to submit its Emergency Response Plan to PHMSA until sometime close to when the Keystone Pipeline is placed into operation. Keystone's Emergency Response Plan is addressed in The Final Supplemental Environmental Impact Statement at <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

7. All documents that support the proposed changes to the Findings of Fact identified in Appendix C to Keystone's application filed on September 14, 2014 with the PUC.

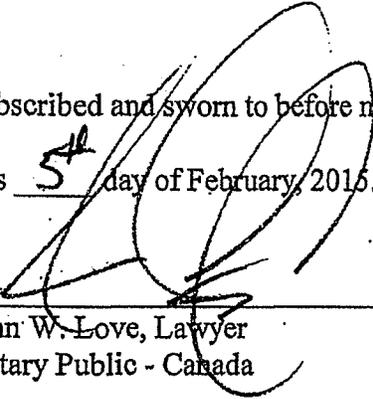
OBJECTION: This request is overlybroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). Appendix C to Keystone certification petition includes citations to sources for many of the statements in the document.

Dated this 5th day of February, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP
by its agent, TC Oil Pipeline Operations, Inc.

By 
Its Director, Authorized Signatory

Subscribed and sworn to before me
this 5th day of February, 2015.



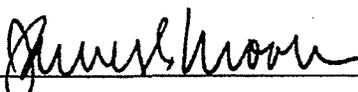
John W. Love, Lawyer
Notary Public - Canada

OBJECTIONS

The objections stated to Yankton Sioux Tribe's Interrogatories and 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 6th day of February, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

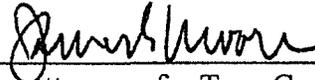
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Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2015, I sent by e-mail transmission,
a true and correct copy of Keystone's Responses to Yankton Sioux Tribe's First

Interrogatories and Request for Production of Documents, to the following:

Thomasina Real Bird
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, CO 80027
trealbird@ndnlaw.com



One of the attorneys for TransCanada

Melissa Wipf

From: James E. Moore
Sent: Tuesday, April 07, 2015 9:53 AM
To: trealbird@ndnlaw.com
Cc: Melissa Wipf; William Taylor
Subject: Keystone XL discovery

Thomasina,

Thanks for your letter of April 1, 2015. We have the following responses to your discovery concerns.

Interrogatory No. 10: The identity of the persons conducting surveys is not relevant or reasonably calculated to lead to the discovery of admissible evidence. The Department of State was satisfied with the surveys conducted.

Interrogatory No. 13: Keystone has not hired any environmental inspectors for KXL. There is no additional information that we can provide.

Interrogatory No. 15: Keystone has not hired any contractors for KXL. We will stand on the objection that information related to contractors on other projects is not relevant or likely to lead to the discovery of admissible evidence..

Interrogatory No. 16: Keystone has not hired any contractors for KXL. We will stand on the objection that information related to contractors on other projects is not relevant or likely to lead to the discovery of admissible evidence.

Interrogatory No. 21: Keystone stands on its objection.

Interrogatory No. 32: Keystone will provide latitude/longitude information for the camps in South Dakota. I'll get that for you yet today.

With respect to the document requests, Keystone stands on its objections and responses.

Please advise if you have any further questions or comments.

James

