

12

STATE OF NEBRASKA

FILED FOR RECORD

HOLT COUNTY, ss

Mo. 3 Day 19 20 14

At 2:20 O'Clock P M Recorded

In book 94 of Misc.

Page 145

CATHY PAVEL, County Clerk  
*Cathy Pavel* CHIEF CLERK

Prepared by and after recording  
please return to:  
TransCanada Keystone Pipeline, LP  
1106 Benjamin Avenue, Suite 600  
Norfolk, NE 68701

2014000742

(Above Space for Recorder's Use Only)

ML-NE-HT-30470.000  
ML-NE-HT-30480.000  
ML-NE-HT-30485.000  
ML-NE-HT-30490.000

EASEMENT AND RIGHT-OF-WAY  
AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "Agreement"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (collectively, the "Consideration"), Elkhorn River Holdings, LLC, whose mailing address is 86943 498<sup>th</sup> Ave., O'Neill, NE 68763, (hereinafter called "Grantor") does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP, a limited partnership having its principal place of business at 717 Texas Street, Houston, Texas 77002, its successors and assigns (hereinafter called "Grantee"), a perpetual permanent easement and right-of-way (the "Easement") for the purposes of surveying, laying,  
Grantor's Initials *ERH* [1]

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ML-NE-HT-30485.000 ML-NE-HT-30490.000

constructing, inspecting, maintaining, operating, repairing, replacing, altering, and reconstructing in place one (1) pipeline, not to exceed thirty-six inches (36") in nominal pipe diameter, together with all fittings, cathodic protection equipment, pipeline markers, and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of crude petroleum, oil and petroleum by-products, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Easement Area") located on real property situated in the County of Holt, State of Nebraska owned by Grantor and described as follows:

A tract of land containing 318.18 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as a part of the E1/2 of Section 17, T29N, R10W of the 6<sup>th</sup> P.M., as recorded in Book 202, Page 93 and Book 202, Page 85 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 633.75 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as all of Section 21, except that portion deeded to the State of Nebraska for roads, in T29N, R10W of the 6<sup>th</sup> P.M., as recorded in Book 202, Page 93 and Book 202, Page 85 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the SW1/4 of Section 15, T29N, R10W of the 6<sup>th</sup> P.M., as recorded in Book 202, Page 93 and Book 202, Page 85 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

A tract of land containing 160 acres, more or less, situated in the County of Holt, in the State of Nebraska, being further described as the NW1/4 of Section 22, T29N, R10W of the 6<sup>th</sup> P.M., as recorded in Book 202, Page 93 and Book 202, Page 85 in the Deed Records of Holt County, Nebraska; less and except any conveyances heretofore made.

(the "Property"). In addition, during the original construction of the pipeline (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), but in no event longer than twenty-four (24) months from the date Grantee commences actual pipeline installation activities on the Property (the "Initial Construction Period"), the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space," "Temporary Access Easement" and "Additional Temporary Work Space" and are more particularly described in Exhibit A hereto (the "Temporary Work Space"), provided, however, such time shall be extended for such period of time that Grantee is unable to exercise its rights hereunder due to force majeure. For purposes of this Agreement, "force majeure" shall mean any event beyond the reasonable control of Grantee, including, without limitation, weather, soil conditions, and government approvals.

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary

Grantor's Initials *[Signature]*

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Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee has compensated Grantor, in advance, for the reasonably anticipated and foreseeable costs and expenses which may arise out of, are connected with, or relate in any way to Grantor's conveyance of the Easement and the proper installation, presence or operation of the pipeline upon the Property, including but not limited to, any and all tree, crop, plant, timber, harvest or yield loss damages, diminution in value of the Property, or any other reasonably foreseeable damages attributable to or arising from Grantee's proper execution of the initial construction, mitigation, and restoration activities within the Easement.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline, and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee further shall have the right to install access gates in any fences which cross the Easement Area. Grantee and its designated contractors, employees and invitees hereby agree to keep all access gates closed at all times when not in use to prevent the cattle, horses and/or other livestock located on the Property from straying.

3. Subject to Grantee's rights hereunder, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, undergrowth, buildings, engineering works, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, operation, use, inspection, maintenance or repair of said pipeline, or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not excavate or otherwise alter the ground elevation from such ground elevation that existed at the time construction is completed, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and Temporary Work Space, provided, however, except in case of emergency, Grantee agrees that to the extent existing public roads, public rights-of-way, the Temporary Access Easements (if any) or other easements in favor of Grantee provide reasonable access to the Easement Area and Temporary Work Space, Grantee shall use such existing roads, rights-of-way, and easements for ingress and egress.

4. Grantor shall, upon thirty (30) days prior notice to Grantee, further have the right to construct, maintain, repair, and operate above ground fences, roads, streets, alleys, sidewalks, bridges, and

Grantor's Initials *MLA*

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drainage pipes across the Easement Area at an angle of not less than forty-five (45) degrees to the Grantee's pipeline; provided, however, Grantor shall exercise said rights in such a manner so that (i) the Grantee's pipeline or its appurtenances located within the Easement Area shall not be endangered, obstructed, injured or interfered with; (ii) Grantee's access to the Easement Area, the Grantee's pipeline and its other appurtenances located thereon are not interfered with; (iii) Grantee shall not be prevented from traveling within and along Easement Area on foot or in vehicle or machinery; (iv) Grantee's pipeline is left with the amount of cover originally installed to allow safe operation of the Grantee's pipeline; (v) the Grantee's pipeline is left with proper and sufficient and permanent lateral support; and (vi) Grantee's use of the Easement Area for the purposes set forth herein is not unreasonably impaired or interfered with.

5. During the Initial Construction Period, Grantee shall also provide suitable crossings on, over and across the Easement Area so as to afford Grantor reasonable access over and across and the Easement Area in accordance with Grantor's customary use of the Property.

6. Grantee shall dispose of all brush and debris, if any, cleared from the Easement Area by burning, chipping, and/or burying, which method of disposal shall be selected by Grantee in Grantee's sole discretion.

7. Grantee shall install the Grantee's pipeline to a minimum depth design as to allow for the safe current farming practice including deep tillage. This depth shall not be less than forty-eight inches (48") below current grade level and any then existing drainage ditches, creeks and roads, except at those locations where rock is encountered, the pipeline may be installed with a minimum depth of twenty-four inches (24"). Such depth shall be measured from the top of the pipe to the surface of the ground. In the event the pipeline is installed less than forty-eight inches (48") below Grantee shall notify Grantor of any and all of said locations.

8. In areas of cropland, Grantee agrees to cause the topsoil to be removed from the trench to a depth of twelve inches (12") or the topsoil depth, whichever is less, and return, as nearly as practicable, said topsoil to its original, pre-construction position relative to the subsoil.

9. Prior to the conclusion of the Initial Construction Period, Grantee shall grade and slope the Easement Area and Temporary Work Space in order to restore the same to its pre-construction grade to the extent reasonably possible and to the extent such grade does not interfere with the maintenance and/or safe operation of the Grantee's pipeline.

10. Grantee shall maintain the Easement Area (and the Temporary Work Space during the Initial Construction Period) by keeping it clear of all litter and trash during periods when Grantee and its employees, agents, or contractors are on the Property.

11. Notwithstanding anything herein to the contrary, except as otherwise required by applicable laws, regulations or industry standards, Grantee shall not install or maintain any permanent above-ground structures of any kind on or within the Easement Area other than pipeline markers (which markers may be required to be placed along the Easement Area by applicable Department of Transportation Code regulations and other applicable statutes and regulations of governmental authorities) and cathodic protection equipment. After the Initial Construction Period expires, no pipelines, above-ground structures, installations, equipment or apparatus of any kind will be on or within the Temporary Work Space.

12. In the event Grantee elects to abandon the Easement Area in whole or in part, Grantee may, at its sole election, either leave the improvements in place or remove them. In the event Grantee elects to remove the improvements, Grantee shall restore the Easement Area, as nearly as is practicable, to its condition prior to removal. In the event Grantee elects to abandon the improvements in place, Grantee shall comply with all then applicable federal and state laws, rules and regulations relating to such abandonment.

Grantor's Initials *DLR*

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ML-NE-HT-30485.000 ML-NE-HT-30490.000

13. Grantor acknowledges and agrees that the information set forth at Exhibit A hereto, including, without limitation, the location and area of the proposed Easement Area depicted, is approximate and preliminary and is based upon publicly available information, calculations, measurements and estimates without the benefit of site-specific on the ground investigation, inspection or survey; Grantor further acknowledges and agrees that Grantee shall have the right to modify the location of the Easement Area and/or Temporary Work Space within the Property as a result of, among other things, site investigation, inspections or surveys, various engineering factors or to correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. In the event such a modification is required by Grantee, Grantee may modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" referring to this instrument and setting forth the modified legal description of the Easement Area and/or Temporary Work Space, which description may be set forth by map attached to said Notice. A copy of the Notice shall be delivered to the Grantor. Without limiting Grantee's right to modify the location of the Easement Area and/or Temporary Work Space by recording a "Notice of Location" as aforesaid, Grantor agrees to execute and deliver to Grantee any additional documents Grantee may request to modify or correct the legal description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space. If such documents are required, they will be prepared by Grantee at its expense. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

14. Grantee shall comply in all material respects, at Grantee's sole cost, with all applicable federal, state, and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair and service of the Grantee's pipeline. Notwithstanding the foregoing, Grantee shall not be responsible for any costs that are necessitated, caused by, or are the result of any act or omission of negligence, recklessness, or willful misconduct by the Grantor or anyone acting on the Grantor's behalf.

15. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

16. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

17. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. This Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

18. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

19. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

20. This Agreement shall be governed by the law of the State in which the Easement Area is situated.

21. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

Grantor's Initials                     

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ML-NE-HT-30485.000 ML-NE-HT-30490.000

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the 13<sup>th</sup> day of March, 2014.

GRANTOR(S):

Elkhorn River Holdings, LLC  
Elkhorn River Holdings, LLC

[Signature]  
By:

General Manager  
Its:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

Grantor's Initials [Signature]

[6]

ML-NE-HT-30470.000 ML-NE-HT-30480.000  
ML-NE-HT-30485.000 ML-NE-HT-30490.000

Acknowledgement of Limited Liability Company

STATE OF NEBRASKA

COUNTY OF Nolt

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March 2014

By Richard C. Rehfeld General Manager (or agent) on behalf of Elkhorn River Holdings, LLC,  
a limited liability company.



Affix Seal Here

Van R. Shepardson  
Notary Public Signature

Grantor's Initials

RCR

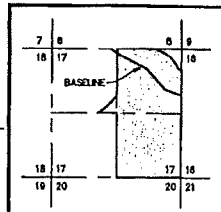
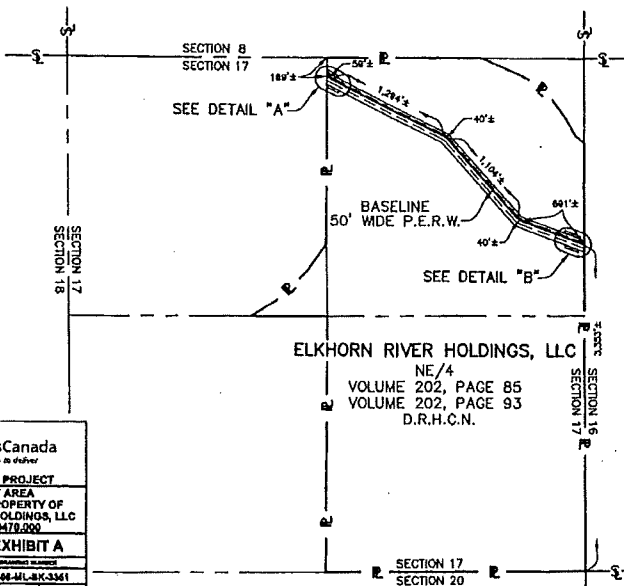
(7)

ML-NE-HT-30470.000 ML-NE-HT-30480.000  
ML-NE-HT-30485.000 ML-NE-HT-30490.000

# HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 17  
ML-NE-HT-30470.000

LEGEND  
 S PROPERTY LINE  
 P SECTION LINE  
 A PROPOSED  
 T.A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.P.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA



VICINITY MAP  
N.T.S.

ELKHORN RIVER HOLDINGS, LLC  
 NE/4  
 VOLUME 202, PAGE 85  
 VOLUME 202, PAGE 93  
 D.R.H.C.N.

<b>TransCanada</b> As directed by order	
<b>KEYSTONE XL PROJECT</b>	
<b>EASEMENT AREA</b>	
<b>ACROSS THE PROPERTY OF</b>	
<b>ELKHORN RIVER HOLDINGS, LLC</b>	
<b>ML-NE-HT-30470.000</b>	
<b>EXHIBIT A</b>	
PROJECT NO.	XL-06-ML-NY-3361
APPROVED BY	UNID
DATE	05/20/13
BY	PB
BY	BM

**NOTE:**  
 THIS SKETCH DOES NOT MEET THE MINIMUM  
 STANDARDS FOR PROPERTY BOUNDARY SURVEYS.  
 IT WAS NOT DERIVED FROM AN ON THE GROUND  
 SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
 PURPOSES ONLY.

exp.

TOTAL DISTANCE ACROSS PROPERTY: 3,229'±  
 AREA OF PERMANENT EASEMENT: 3.7 ACRES  
 AREA OF TEMPORARY WORKSPACE: 4.4 ACRES  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.3 ACRE

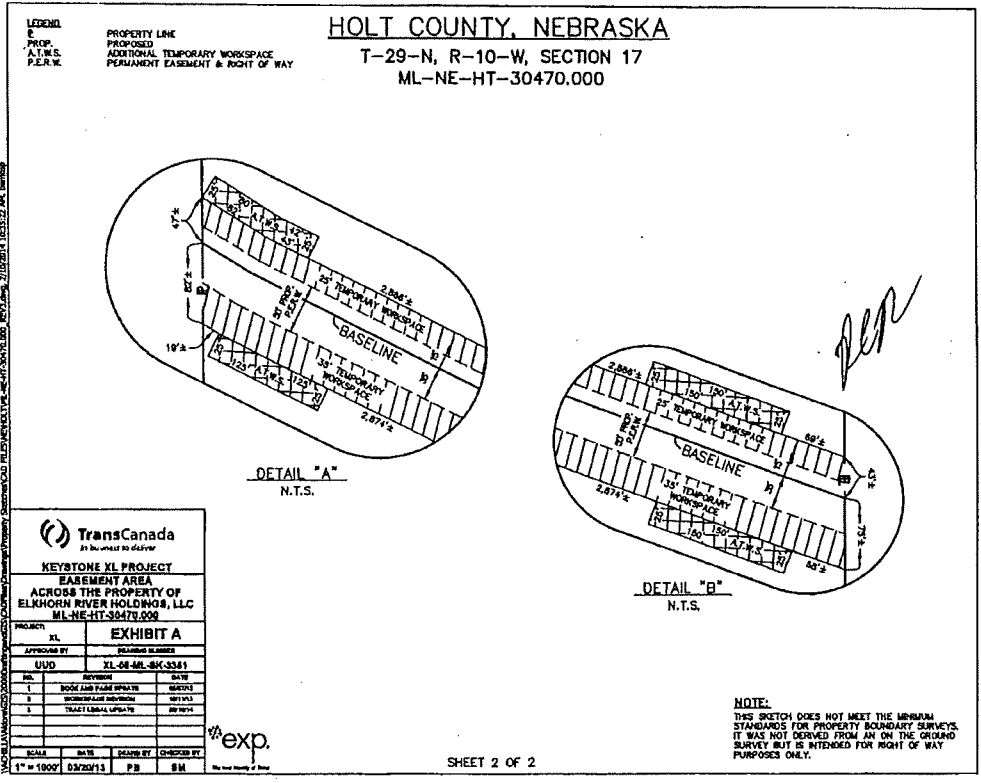
SHEET 1 OF 2

152

96-152



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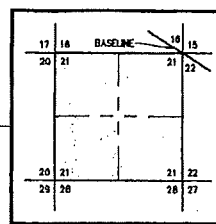
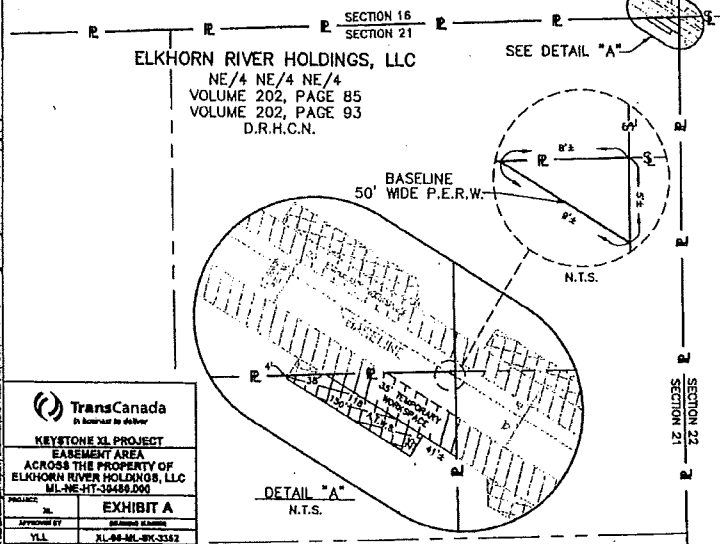


96-153

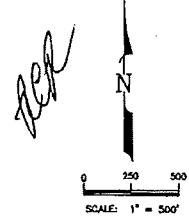
# HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 21  
ML-NE-HT-30480.000

LEGEND:  
 P. PROPERTY LINE  
 S. SECTION LINE  
 PROP. PROPOSED  
 A.T.W.S. ADDITIONAL TEMPORARY WORKSPACE  
 P.E.R.W. PERMANENT EASEMENT & RIGHT OF WAY  
 D.R.H.C.N. DEED RECORDS OF HOLT COUNTY, NEBRASKA



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
SECTION 21,  
T-29-N, R-10-W

NOTE:  
THIS SKETCH DOES NOT MEET THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS. IT WAS NOT DERIVED FROM AN OLD OR ORIGINAL SURVEY BUT IS INTENDED FOR RIGHT OF WAY PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 9 1/2'  
 AREA OF PERMANENT EASEMENT: 0.1 ACRE  
 AREA OF TEMPORARY WORKSPACE: 0.1 ACRE  
 AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.1 ACRE

ELKHORN RIVER HOLDINGS, LLC  
 NE/4 NE/4 NE/4  
 VOLUME 202, PAGE 85  
 VOLUME 202, PAGE 93  
 D.R.H.C.N.

DETAIL "A"  
N.T.S.

**TransCanada**  
In honor to deliver

**KEYSTONE XL PROJECT**  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
ELKHORN RIVER HOLDINGS, LLC  
ML-NE-HT-30480.000

PROJECT: **EXHIBIT A**

APPROVED BY	DATE
YLL	XL-88-ML-89-2382
NO. 1	NO. 2
NO. 3	NO. 4
NO. 5	NO. 6
NO. 7	NO. 8
NO. 9	NO. 10
NO. 11	NO. 12
NO. 13	NO. 14
NO. 15	NO. 16
NO. 17	NO. 18
NO. 19	NO. 20
NO. 21	NO. 22
NO. 23	NO. 24
NO. 25	NO. 26
NO. 27	NO. 28
NO. 29	NO. 30
NO. 31	NO. 32
NO. 33	NO. 34
NO. 35	NO. 36
NO. 37	NO. 38
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NO. 41	NO. 42
NO. 43	NO. 44
NO. 45	NO. 46
NO. 47	NO. 48
NO. 49	NO. 50

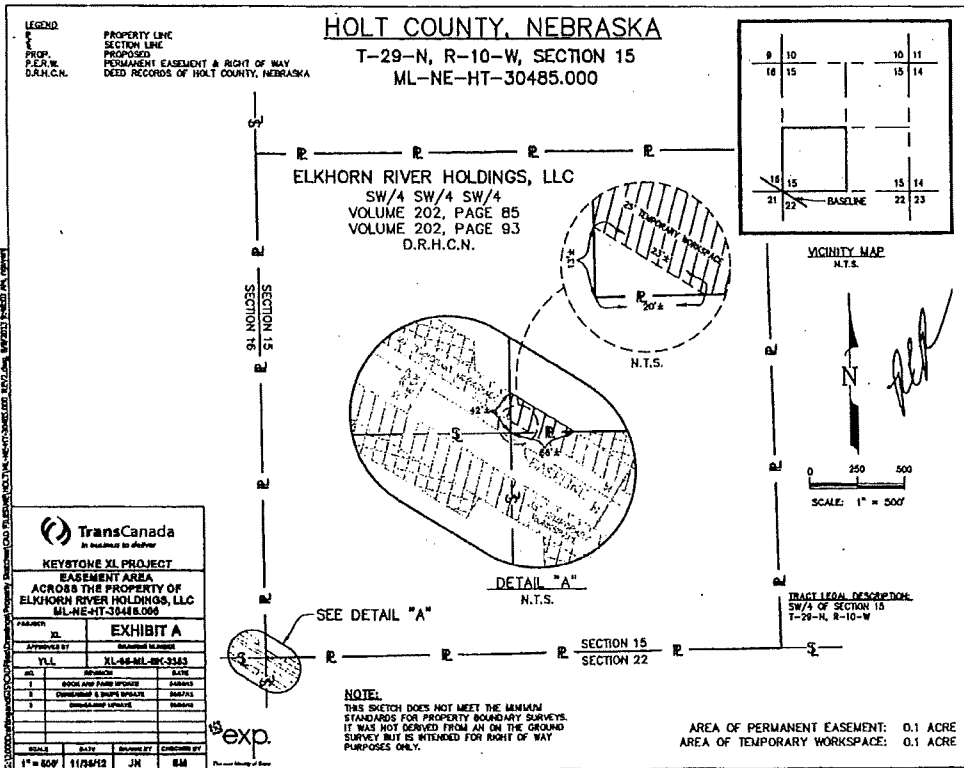
SCALE: 1" = 500'    DATE: 06/14/12    DRAWN BY: JN    CHECKED BY: BM

exp

154

96-154

155

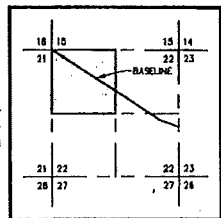
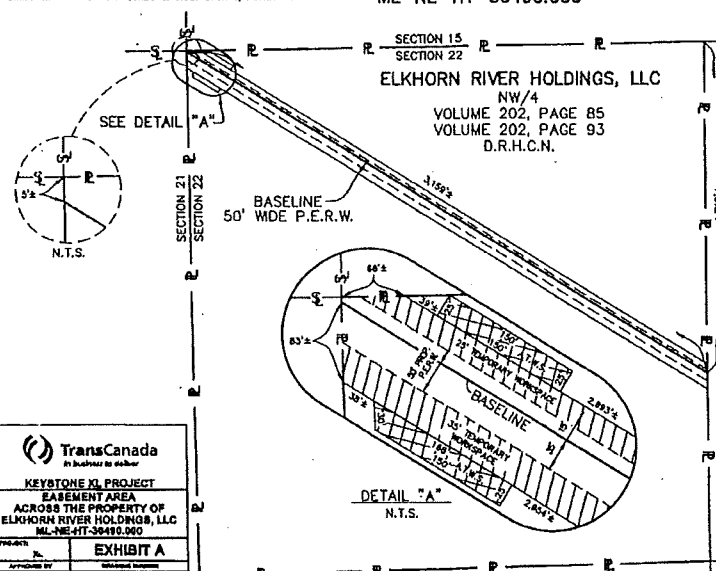


96-155

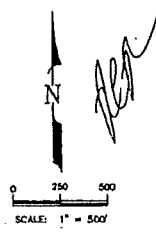
HOLT COUNTY, NEBRASKA

T-29-N, R-10-W, SECTION 22  
ML-NE-HT-30490.000

LEGEND:  
PROPERTY LINE  
SECTION LINE  
PROPOSED  
ADDITIONAL TEMPORARY WORKSPACE  
PERMANENT EASEMENT & RIGHT OF WAY  
DEED RECORDS OF HOLT COUNTY, NEBRASKA



VICINITY MAP  
N.T.S.



TRACT LEGAL DESCRIPTION:  
NW/4 OF SECTION 22  
T-29-N, R-10-W

**TransCanada**  
In business to another

**KEYSTONE XL PROJECT**  
EASEMENT AREA  
ACROSS THE PROPERTY OF  
ELKHORN RIVER HOLDINGS, LLC  
ML-NE-HT-30490.000

**EXHIBIT A**

APPROVED BY	DATE		
VLL	XL-08-ML-0K-3364		
NO.	ACTIVITY	DATE	
1	DESIGN DEVELOPMENT	04/01/11	
1	DESIGN DEVELOPMENT & SHOP DRAWINGS	05/01/11	
1	CONSTRUCTION	06/01/11	
SCALE	SHEET	REVISED BY	DESIGNED BY
1" = 500'	84201113	JH	EM

**NOTE:**  
THIS SKETCH DOES NOT MEET THE MINIMUM  
STANDARDS FOR PROPERTY BOUNDARY SURVEYS.  
IT WAS NOT DERIVED FROM AN ON THE GROUND  
SURVEY BUT IS INTENDED FOR RIGHT OF WAY  
PURPOSES ONLY.

TOTAL DISTANCE ACROSS PROPERTY: 3,159'±  
AREA OF PERMANENT EASEMENT: 3.6 ACRES  
AREA OF TEMPORARY WORKSPACE: 4.3 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.2 ACRE

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