

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION BY ) TRANSCANADA KEYSTONE PIPELINE, LP ) FOR A PERMIT UNDER THE SOUTH DAKOTA ) ENERGY CONVERSION AND TRANSMISSION ) FACILITIES ACT TO CONSTRUCT THE ) KEYSTONE XL PROJECT ) )	HP14-001  APPLICATION FOR PARTY STATUS BY THE CHEYENNE RIVER SIOUX TRIBE
--	---

COMES NOW, the Cheyenne River Sioux Tribe, by and through its undersigned signatory, and pursuant to SDCL §49-41B-17(2)(3) petitions to be granted party-status in the above referenced matter. The petitioner’s interests are as follows:

1. The Cheyenne River Sioux Tribe is a federally- recognized Indian Tribe residing on the Cheyenne River Sioux Reservation of South Dakota. The address of the Tribal government headquarters is Post Office Box 590, Eagle Butte, South Dakota 57625.

2. The Keystone XL project would cross lands that has been adjudged by the U.S. Indian Claims Commission and the U.S. Court of Claims to be the aboriginal and Treaty-titled land of the petitioner Cheyenne River Sioux Tribe. *United States v. Sioux Nation of Indians*, 601 F.2d 1157, 1172 (Ct. Cl. 1975) *aff'd* 448 U.S. 384 (1980); *Sioux Nation v. United States*, 21 Ind. Cl. Comm. 371, 382 (1974).

3. The proposed Keystone XL (KXL) pipeline threatens to contaminate the source of water for our Mni Waste Water System. The pipeline is proposed to run through our aboriginal homelands just south of the western border of our present reservation. The proposed route of the pipeline will cross the Cannonball River, Grand River, Moreau River, and Cheyenne River in the Dakotas and these rivers individually and collectively enter the Missouri River in Lake Oahe, the Pick Sloan Reservoir immediately upstream from our intake. At the present time the Cheyenne River Sioux Tribal membership uses water from the Cheyenne River for drinking water supply.

4. The petitioner Tribal government includes programs empowered to protect water quality (Environmental Protection Department) and to preserve historical sites (Cultural Preservation Office). Their mission includes the protection of water quality and historic properties both within and outside of the exterior boundaries of the Cheyenne River Sioux Indian Reservation. *See* 33 U.S.C. §1377(e) (authorizing Tribes to be treated as states for water quality standards under the Clean Water Act); 16 U.S.C. §470a(d)(2) (authorizing Tribes to assume State Historic Preservation Office

functions under the National Historic Preservation Act). The proposed Keystone XL project will traverse land and waters of concern to the Cheyenne River Sioux Tribe's Environmental Protection Office and Cultural Preservation Office.

5. The petitioner possesses proprietary rights to certain human remains, funerary objects and cultural objects of Native American origin that may be unintentionally unearthed during construction of the Keystone XL project. These rights are codified in section 3 of the federal Native American Graves Protection and Repatriation Act, 25 U.S.C. §3002(a)(2).

6. Secondary environmental and health effects of the construction of the Keystone XL project would directly impact the Cheyenne River Sioux Tribe, such as increased traffic on U.S. Highway 212, SD Highway 63 and SD Highway 34 which run directly on or boarder on the Reservation, the possible development of worker camps and infrastructure near Indian land in Meade County, and place further stress on limited rural health care resources in our region.

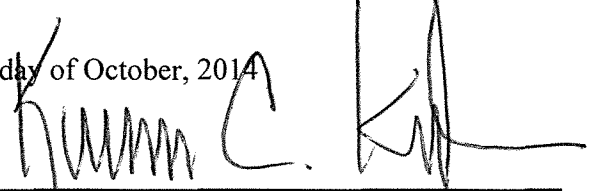
7. The cumulative environmental impacts of the Keystone XL project and other recently-proposed projects, such as the Dakota Access Pipeline, have not been evaluated, and may have a significant effect on the Cheyenne River Sioux Tribal environment.

8. The petitioner possesses rights under other federal statutes, regulations, executive orders, and treaties, compliance with which has not been demonstrated by TransCanada Keystone Pipeline, LP.

WHEREFORE, petitioner respectfully applies for an order granting party status.

Dated this 14<sup>th</sup> day of October, 2014

By:

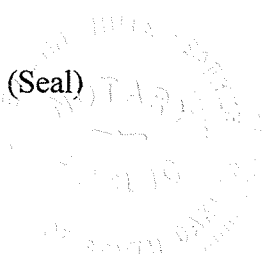
  
Kevin C. Keckler  
Chairman  
Cheyenne River Sioux Tribe  
PO Box 590  
Eagle Butte, SD 57625  
(605) 964-4155  
kevinckeckler@yahoo.com

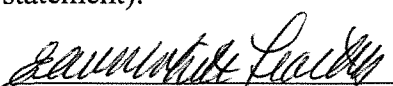
State of South Dakota

County of Dewey

Subscribed and sworn to (or affirmed) before me on this 14<sup>th</sup> day of October,  
20 14, by \_\_\_\_\_ (name of person making statement).

(Seal)



  
Signature of Notary Public  
My commission expires: 5/18/19



## EXECUTIVE RESOLUTION NO. E-224-2014-CR

- WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated tribe of Indians, having accepted the provisions of the Act of June 18, 1934, (48 Stat. 984); and
- WHEREAS, the Tribe, in order to establish its tribal organizations, to conserve its tribal property, to develop its common resources, and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws; and
- WHEREAS, immediately following the first Keystone project in Eastern South Dakota, oil transportation company TransCanada began to work on the Keystone XL pipeline proposal through Western South Dakota, to including the ancestral homelands of the Great Sioux Nation; and
- WHEREAS, the route of the pipeline is called Keystone XL because it is the second oil transmission pipeline to be constructed by the same company that built the first Keystone pipeline, crosses through Tribal Nations and in northern Alberta, Saskatchewan, Montana, North Dakota, South Dakota and Nebraska, near and potentially over, many culturally significant areas for Tribal Nations within those provinces and states; and
- WHEREAS, the proposed pipeline will carry tar sands oil from Alberta to oil refineries in Texas, crossing an estimated 313 miles of South Dakota land, and an untold number of drinking and agriculture water sources; and
- WHEREAS, on March 12, 2009, TransCanada filed for a pipeline permit with the South Dakota Public Utilities Commission (SDPUC), who granted the permit on June 29, 2010 and
- WHEREAS, the SDPUC issued an "Amended Final Decision And Order; Notice Of Entry, In The Matter Of The Application By TransCanada Keystone Pipeline, LP For A Permit Under The South Dakota Energy Conversion And Transmission Facilities Act To Construct The Keystone XL Project" (Decision); and
- WHEREAS, on June 30, 2014 the permit expires and TransCanada will not be able to work in the State of South Dakota without returning to the Public Utilities Commission to recertify their permit; and
- WHEREAS, South Dakota Codified Law 49-41B-27 requires that if construction has not commenced within four years after a permit has been issued, the utility (in this case, TransCanada) must certify to the Commission that the facility continues to meet the conditions upon which the permit was granted; and
- WHEREAS, the Environmental section of Decision of the SDPUC contains numerous duplicitous statements, utilizing Keystone's (TransCanada) experts (44), some of these statements are as follows:
- "Keystone's expert estimated the chance of a leak from the Project to be not more than one spill in 7,400 years for any given mile of pipe" (44);

## EXECUTIVE RESOLUTION NO. E-224-2014-CR

### Page Two

- “Keystone's spill frequency and volume estimates are conservative by design, overestimating the risk since the intent is to use the assessment for planning purposes. The risk assessment overestimates the probable size of a spill to ensure conservatism in emergency response and other planning objectives. If a spill were to occur on the Keystone pipeline, PHMSA data indicate that the spill is likely to be three barrels or less” (45);
- “The risk of a spill affecting public or private water wells is low because the components of crude oil are unlikely to travel more than 300 feet from the spill site” (49);
- “The total length of Project pipe with the potential to affect a High Consequence Area (HCA) is 34.3 miles. A spill that could affect an HCA would occur no more than once in 250 years” (50);
- “In the event that soils and groundwater are contaminated by a petroleum release, Keystone will work with state agency personnel to determine what type of remediation process would be appropriate. TR 148. Effective emergency response can reduce the likelihood and severity of contamination” (51);
- “Of the approximately 314-mile route in South Dakota, all but 21.5 miles is privately owned. 21.5 miles is state-owned and managed. No tribal or federal lands are crossed by the proposed route” (54);
- “If previously undocumented sites are discovered within the construction corridor during construction activities, all work that might adversely affect the discovery will cease until Keystone, in consultation with the appropriate agencies such as the SHPO, can evaluate the site's eligibility and the probable effects. If a previously unidentified site is recommended as eligible to the National Registry of Historic Places, impacts will be mitigated pursuant to the Unanticipated Discovery Plan submitted to the SHPO. Treatment of any discovered human remains, funerary objects, or items of cultural patrimony found on federal land will be handled in accordance with the Native American Grave Protection and Repatriation Act” (58); and

WHEREAS, between 2002 and 2012, 1,692 spills occurred according to the State Department, Bureau of Oceans and International Environmental and Scientific Affairs Final Supplemental Environmental Impact Statement (FSEIS) for the Keystone XL Project (ES-18); and

WHEREAS, the spill into the Kalamazoo River in July 2010 involved the same type of crude as that to be carried by the KXL pipeline and that spill affected 36 miles of the River.<sup>1</sup> That spill was carried dozens of miles downstream before sinking to the riverbed, and continues to present clean up problems today; and

---

<sup>1</sup> Michigan Department of Community Health, *Public Health Assessment: Kalamazoo River/Enbridge Spill: Evaluation of people's risk for health effects from contact with the submerged oil in the sediment of the Kalamazoo River* (May 2012).

**EXECUTIVE RESOLUTION NO. E-224-2014-CR**

**Page Three**

- WHEREAS, the FSEIS acknowledges that “sinking oil can be deposited in river or stream bottoms and become a continual source of release over time” (At ES-19); and
- WHEREAS, the KXL Pipeline will pass near and through many wetlands and ephemeral streams and will cross the Moreau and Cheyenne Rivers and threatens to contaminate the source of water for the Mni Waste Water System; and
- WHEREAS, the FSEIS fails to recognize intakes that service Indian reservations as a High Consequence Area; and
- WHEREAS, the pipeline will cross the Cannonball River, Grand River, Moreau River, and Cheyenne River in the Dakotas and these rivers individually and collectively enter the Missouri River in Lake Oahe, the Pick Sloan Reservoir immediately upstream from our intake; and
- WHEREAS, a spill would affect any number of tributaries that flow into the water source for the people of the Cheyenne River Sioux Indian Reservation and would prove devastating, thereby significantly impacting tribes; and
- WHEREAS, the Decision offers conflicting statements on the issue of tribal lands being crossed, stating that no tribal lands will be crossed and then stating that treatment of any discovered human remains, funerary objects, or items of cultural patrimony found on federal land will be handled in accordance with the Native American Grave Protection and Repatriation Act”; and
- WHEREAS, there is no consideration for our ancestral homelands in the Decision and our ancestral homeland includes, but is not limited, to the treaty territory of the Great Sioux Nation, as recognized in the Fort Laramie Treaties of 1851 and 1868; and
- WHEREAS, TransCanada's initial Presidential Permit request was denied by the U.S. State Department in January 2012 and TransCanada reapplied for a Presidential Permit in May of 2012; and
- WHEREAS, on April 18, 2014, the U.S. State Department announced it will delay the national interest determination period indefinitely; and
- WHEREAS, the State of South Dakota Public Utilities Commission has failed to properly involve Indigenous Nations or even to recognize our nations as the Third Sovereign in its review of the proposed project, thereby neglecting its legal obligations to engage Indigenous Nations on a Government to Government basis; and
- WHEREAS, the Cheyenne River Sioux Tribe is authorized with authorities via the Ft. Laramie Treaties of 1851 and 1868, as well as the CRST Constitution; and
- WHEREAS, Article 32, Sections 1-3 of the Declaration on the Rights of Indigenous Peoples, requires Nation States, as a minimum, to recognize and implement the following in their relationship with Indigenous Peoples:

**EXECUTIVE RESOLUTION NO. E-224-2014-CR**

**Page Four**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in the good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilizations or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact; and

WHEREAS, the PUC's failure to have proper consultation with Indian nations is particularly egregious in light of The State of South Dakota's core principals of working with Indian tribes and states in part, "The State of South Dakota is to be engaged in a government to government relationship with the Tribes; and

WHEREAS, the State of South Dakota is unable to determine the impact the proposed Keystone XL Pipeline would have on cultural and historic sites and the environmental impact to tribes; and

WHEREAS, the preservation and protection of our cultural and spiritual resources are mandated by the natural laws of every Indigenous Nation and are of the utmost importance to our continued existence as Sovereign Nations; and

WHEREAS, the Sovereign Nation of the Cheyenne River Sioux Tribe will not now or ever allow the State of South Dakota or any government to deny us our right to preserve and protect what we hold sacred through repeated violations of federal laws; now

THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribe does hereby request that the State of South Dakota Public Utilities Commission does not recertify the permit for TransCanada and the Keystone XL Pipeline; and

BE IT FURTHER RESOLVED, this process does not allow tribes to share information with the State of South Dakota in a cooperative manner even though the lands on which Indigenous Nations' sacred, cultural, and historic sites are found, often overlap; and

BE IT FURTHER RESOLVED, that the Cheyenne River Sioux Tribe continues to be firmly opposed to the construction of any and all segments of the proposed Keystone XL Pipeline; and

**EXECUTIVE RESOLUTION NO. E-224-2014-CR**

**Page Five**

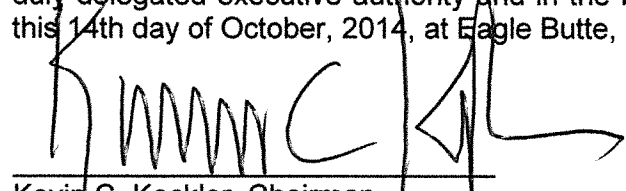
BE IT FURTHER RESOLVED, that the Cheyenne River Sioux Tribe hereby demands that all State agencies involved in the review of the proposed Keystone XL pipeline act in accordance with the Nation to Nation relationship that exists between Indigenous Nations and the United States of America, as recognized by our treaties and by federal law; and

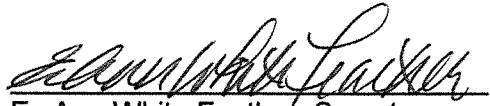
BE IT FURTHER RESOLVED, that President Barack Obama and the United States is urged to reduce its reliance on the world's dirtiest and most environmentally destructive form of oil – the "tar sands" – that threatens all populations including Tribal Nations and Treaty Territories in both the United States and Canada and the way of life for thousands of American citizens; and

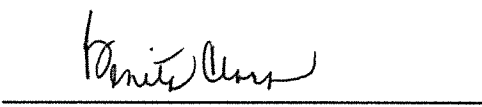
BE IT FINALLY RESOLVED, that nothing in this resolution diminishes, divests, alters, or otherwise affects any inherent, treaty, statutory or other rights of the Cheyenne River Sioux Tribe over the property or activities described herein. The Cheyenne River Sioux Tribe expressly retains all rights and authority over the property and activities described herein, including but not limited to legislative, regulatory, adjudicatory, and taxing powers.

**CERTIFICATION**

This is to certify that the foregoing resolution has been reviewed and approved by the undersigned Executive Committee of the Cheyenne River Sioux Tribal Council, acting under the duly delegated executive authority and in the best interest of the Cheyenne River Sioux Tribe, this 14th day of October, 2014, at Eagle Butte, South Dakota.

  
Kevin C. Keckler, Chairman

  
Ev Ann White Feather, Secretary

  
Benita Clark, Treasurer

